



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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MICHIGAN
OHIO

September 5, 2019

President Samuel L. Stanley, Jr.
c/o Brian M. Schwartz, Esq.
Miller, Canfield, Paddock and Stone, P.L.C.
150 West Jefferson, Suite 2500
Detroit, Michigan 48226

Re: OCR Docket No. 15-18-6901
Michigan State University

Dear President Stanley:

On February 22, 2018, OCR opened a directed investigation of Michigan State University's (the University's) Title IX compliance regarding the employment and conduct of Dr. Lawrence Nassar (Employee X). OCR specifically investigated, for the time period from 2011 to the present, the following issues:

- (1) whether the University provided a prompt and equitable response to any student or employee complaints or reports of sexual assault made against an employee as required by the Title IX implementing regulation at 34 C.F.R. § 106.8(b);
- (2) whether an employee, while acting or reasonably appearing to be acting in the context of carrying out his University employment responsibilities in relation to students, created a sexually hostile environment for any students for which the University is responsible under 34 C.F.R. § 106.31;
- (3) whether the University failed to promptly and effectively respond to notice of any sexually hostile environment caused by an employee outside the scope of his official University-employment responsibilities over students, in violation of 34 C.F.R. § 106.31; and
- (4) whether any failure by the University to take prompt and effective action to stop any sexually hostile environment and prevent its recurrence allowed any student(s) to continue to be subjected to a hostile environment that denied or limited the student's ability to participate in or benefit from the University's program, in violation of 34 C.F.R. § 106.31.

During its investigation, OCR obtained evidence showing potential Title IX concerns related to Dr. William Strampel (the Dean), the former dean of the College of Osteopathic Medicine (the College) and one of Employee X's supervisors. Based on these concerns, OCR expanded its investigation to address whether the University failed to appropriately respond to reports of sexual harassment by the Dean.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department, the University is subject to Title IX.

Under the regulation implementing Title VI, at 34 C.F.R. § 100.7(c), which is incorporated by reference in the regulation implementing Title IX, at 34 C.F.R. § 106.71, OCR may conduct a directed investigation in appropriate circumstances, including when a report or other information indicates a possible failure to comply with the regulations and laws enforced by OCR and the matter warrants immediate attention.

After carefully considering information obtained during the investigation, OCR has determined that the University violated the Title IX regulation at 34 C.F.R. §§ 106.8(b) and 106.31 because it failed to promptly and equitably respond to reports and grievances alleging sexual harassment perpetrated by Employee X and the Dean and failed to take appropriate actions reasonably calculated to end the harassment, eliminate the hostile environment, and prevent the harassment from recurring. The bases for these determinations are explained below.

Background and Procedural History

- **The 2015 Resolution Agreement**

On August 28, 2015, the University entered into a resolution agreement with OCR (the 2015 Agreement), signed by the then-University president Lou Anna Simon (the President¹), to resolve two Title IX complaints against the University, OCR Docket Numbers 15-11-2098 and 15-14-2113. In both complaints, a student alleged that the University violated Title IX by failing to provide a prompt and equitable response to a complaint of sexual violence by a fellow student or students. OCR investigated the University's response to these individual complaints, as well as the University's handling of complaints regarding student-on-student sexual harassment and sexual violence. Consequently, the main focus of the investigation was not faculty-on-student

¹ Simon resigned as president of the University on January 24, 2018, and was replaced by interim president, John Engler, who resigned on January 17, 2019, and was replaced by acting president Dr. Satish Udpa. On August 1, 2019, Samuel L. Stanley, Jr., M.D., began his tenure as the president of the University. For simplicity, and because she was president when most of the events relevant to this investigation took place, this letter refers to Simon as the President. According to media reports, after she resigned as president, Simon continued her employment with the University as a member of the faculty. However, in July 2019, she agreed to retire at the end of August 2019. According to the reports, she will receive \$2.45 million paid over three years, medical and dental coverage, the title of "president emeritus," and continued access to football and basketball tickets. The President agreed, in return, not to sue the University.

sexual harassment. OCR's investigation resulted in violation findings. OCR is currently monitoring the 2015 Agreement, which the University signed to address those violations.²

One provision of the 2015 Agreement, Item O, required the University to review all complaints or reports of sex discrimination made from academic years 2010-2011 through 2014-2015 to determine whether the University investigated each complaint promptly and equitably. Item O required that by January 15, 2016, the University submit to OCR the results of its review and all supporting material related to the review; it also required the University to specifically identify any reports or complaints of sex discrimination that the University failed to respond to in a prompt and equitable manner.

On January 15, 2016, the University notified OCR that it had identified 55 complaints that it had not responded to in an appropriate manner. On December 14, 2016, OCR received an email from the University's Office of the General Counsel stating that due to "an unfortunate oversight" the University had failed to include in its Item O review a complaint against Employee X from 2014. On March 17, 2017, OCR received an email from the Office of the General Counsel, stating that "8 additional complaint[s] . . . were erroneously excluded from the initial review" and that it was "now reviewing the necessity of any additional action."

On October 10, 2017, OCR received a letter from the University requesting that OCR release the University from the 2015 Agreement because the University had "gone above and beyond [the 2015 Agreement] requirements." On December 22, 2017, OCR denied its request. OCR cited the University's failure to provide a timely update regarding its supplemental Item O review as a reason for the denial and demanded an update on the University's review. On January 30, 2018, the University submitted a monitoring report regarding its supplemental Item O review in response to OCR's demand for an update. The University's supplemental Item O review found that it had failed to provide a prompt and equitable response to two complaints, neither of which was the 2014 complaint against Employee X. The University produced its most recent information regarding Item O on April 3, 2019. OCR is currently reviewing the documentation provided in the University's updated Item O reports.

- **The Directed Investigation**

While the monitoring of the 2015 Resolution Agreement was ongoing, multiple private lawsuits concerning Employee X were filed against the University. For example, on December 21, 2016,

² OCR notes that on September 1, 2015, the President held a press conference addressing OCR's letter of findings and the 2015 Agreement, during which she said that sexual misconduct is a very serious issue and asserted that the University had already taken "numerous steps" to address issues raised by OCR. She acknowledged that the failure to respond in a timely manner to students who complained "could have been handled differently." She gave further statements about the University's commitment to addressing sexual violence through a University press statement (<https://msutoday.msu.edu/news/2015/msu-improves-timeliness-of-title-ix-investigations-as-government-report-released/>), which was posted with the University's "annotated version" of the 2015 Agreement (https://cabs.msu.edu/_files/documents/ocr-annotated-backgrounder.pdf). The President stated in the press release, "We have long understood that Michigan State is not isolated from sexual assault and harassment, domestic abuse, bullying, racism, and other social problems . . . But we must continue to persistently and consistently improve the environment on our campus with regard to how we address sexual misconduct and relationship violence. And we owe that to every member of our community, from students to employees to families and, most importantly, to survivors."

one such lawsuit was filed in California state court, and in January 2017 multiple plaintiffs filed another lawsuit in federal court in the Western District of Michigan.

It is generally OCR's practice to defer to proceedings in state and federal court that raise the same or similar allegations that would also fall within the scope of an OCR investigation. However, because the ongoing litigation would not likely address concerns regarding the University's overall compliance with Title IX, OCR initiated this directed investigation on February 22, 2018.

- **Methodology**

OCR reviewed documents the University provided in response to five OCR data requests and conducted an onsite visit at the University's campus from April 30, 2018, through May 4, 2018, during which OCR interviewed 39 University witnesses. In addition, OCR interviewed the former student who filed the complaint with the University's Title IX office against Employee X in 2014, and reviewed responses to interview questions OCR sent to all of the represented plaintiffs in the then-pending federal civil litigation against the University in the Western District of Michigan. Throughout the investigation, OCR regularly coordinated with the Department's Clery Act compliance team, with whom OCR conducted a joint interview of three plaintiffs from the civil litigation against the University. OCR also reviewed information obtained through searches of criminal and civil court records concerning Employee X and the Dean, media reports, and documents the University has produced in its monitoring reports for the 2015 Agreement.

- **The University and the College of Osteopathic Medicine**

The main campus of the University is in East Lansing, Michigan. The University also has academic programs in Grand Rapids, Michigan, and Troy, Michigan. In the fall of 2018, approximately 50,000 students attended the University, including approximately 39,000 undergraduate students and 11,000 graduate students. The University is led by a president, a provost and executive vice president for academic affairs, and an eight-member board of trustees (the board). The board members are publicly elected and serve eight-year terms. There are 17 degree-granting colleges within the University, including the College, which was a focal point of this directed investigation.³

- **The Division of Sports Medicine**

The University's Division of Sports Medicine operates the University's Sports Medicine Clinic, which is housed near campus and provides services to members of the public, some of whom are University students. The Division of Sports Medicine is composed of University employees who are physicians, physician assistants, athletic trainers, receptionists, and more.

Each University intercollegiate athletic team is assigned a dedicated sports medicine physician to be team physician. The team physician designation does not prevent those physicians from providing medical services to members of other teams, and physicians often do provide care to

³ University website, <https://msu.edu/about/thisismsu/facts.html>.

athletes on other teams. Sports medicine physicians maintain regular clinic hours in University athletic facilities, such as the Jenison Field House, and provide medical coverage at University athletic events and at some away athletic events.

Physicians in the Division of Sports Medicine are also University faculty members. Most of these physicians are doctors of osteopathic medicine and hold faculty appointments in the College. The Division of Sports Medicine generally functions under the broader umbrella of the MSU HealthTeam, which oversees the system of health care clinics operated by the University and is staffed by faculty members. While the HealthTeam is a separate organization with its own staff, its leadership overlaps with that of the University's academic leadership. The deans of the College, the College of Human Medicine, and the College of Nursing are ex officio members of the HealthTeam's governing board.

The clinical director of sports medicine oversees day-to-day clinical functions, supervises sports medicine physicians, and conducts annual evaluations for physicians. The clinical director reports to both the Dean of the College and the chief executive officer of the HealthTeam. The sports medicine clinic manager, who supervises the support staff, reports to the HealthTeam's director of operations. The HealthTeam sets policies, procedures and protocols for treating patients, and the sports medicine clinic has no separate policies other than those set by the HealthTeam.

Evidence Obtained Regarding Employee X

- **Professional Background and Roles at the University**

Employee X received a Doctor of Osteopathic Medicine (D.O.) degree from the University on May 7, 1993, and began working at the University that same year as an unpaid clinical instructor. Beginning on July 1, 1996, Employee X completed a year-long sports medicine fellowship with the University as he continued his clinical instruction. From 1997 until his termination on September 20, 2016, Employee X was first an assistant professor and later an associate professor in the College.

Employee X had multiple job responsibilities at the University and was involved in numerous University programs. For example, Employee X held an academic appointment, provided medical services to the University's athletic teams, provided by-appointment medical treatment to the general public through the Sports Medicine Clinic, and was involved in various community outreach activities.

Employee X held an academic appointment in the College throughout his employment. Employee X's responsibilities in this academic position included clinical teaching of medical students, residents, and sports medicine fellows. He also lectured at numerous continuing medical education conferences organized by the University, served as the program chair for the University's annual sports medicine conference, and performed numerous other functions for the College.

Employee X provided medical services to the University's intercollegiate athletic teams and was the team physician for the University's women's gymnastics and crew teams from 1997 until 2016. His responsibilities included providing medical treatment to University athletes at athletic events and training facilities, and providing treatment to the general public, including University students (frequently student athletes) at the University's sports medicine clinic and other locations. He maintained regular clinic hours at Jenison Field House, where he saw athletes (not just gymnasts and crew team members) for appointments. Sometimes he also received patient visits from non-students who were training or competing in athletic events at Jenison Field House.⁴ Employee X provided clinical care to patients by appointment at the sports medicine clinic. He provided coverage at a Saturday walk-in clinic run by the Division of Sports Medicine, as well as at a collaborative clinic between the Division of Sports Medicine and a hospital in Lansing.

Employee X also engaged in outreach and community service activities outside of the University. Such activities were often considered among his job duties. For instance, Employee X's 2013 performance evaluation contained a section on "Service and Outreach" discussing his community activities. One such outreach activity was Employee X's volunteer work with USA Gymnastics, the national governing body of gymnastics in the United States. From 1996 to 2014, Employee X served as the national medical coordinator for USA Gymnastics. In this role, he frequently traveled to national and international gymnastics competitions, including the Olympics. Employee X was well known in the gymnastics community for his work with USA Gymnastics. University employees told OCR that Employee X was so well known and respected in the gymnastics community that the University leveraged his reputation to recruit athletes to its gymnastics team and patients to its Sports Medicine Clinic.

- **History of Reports and Complaints**

As discussed in more detail below, on August 29, 2016, a former youth gymnast, Reporter 1, alleged to University police that Employee X had sexually assaulted her during a medical appointment. On September 1, 2016, Reporter 1 filed a parallel complaint with the University's Title IX office. Local and national media outlets took notice of Reporter 1's allegations, and as media inquiries turned into national and international news, more complaints from Employee X's former patients were soon brought to the University's attention. By February 7, 2018, a University spokesperson reported that the University had received more than 190 sexual misconduct complaints by or on behalf of Employee X's former patients. Those complaints included allegations going back to 1989, when Employee X allegedly sexually assaulted a young gymnast at his apartment.

- **Reports**

OCR obtained information during the course of its investigation, including through reports to the University police and documents filed in civil litigation against the University and through interviews, that numerous women and girls, including former students and other University program participants, alleged that they reported concerns about Employee X's conduct to

⁴ For example, Employee X would receive patient visits from youth gymnasts competing at an invitational held at Jenison Field House.

University employees prior to August 2016, when the University first started to respond to complaints. The following list summarizes selected reports allegedly brought to the attention of the University prior to August 2016:

- Reporter 2, [redacted content], alleged to University police that sometime in 1997, she reported to the then-head coach of the University's women's gymnastics team (the Coach) that Employee X touched her inappropriately. This report is discussed in more detail below.
- Reporter 3, a former University volleyball player, alleged that while she was on the volleyball team in 1998-1999 her teammates commonly referred to Employee X as "happy fingers" and frequently talked about his "crotch massages." According to Reporter 3, these comments were made in the presence of at least one former University athletic trainer (Trainer 1).
- Reporter 4, [redacted content], alleged that in or around 1999 she complained to unidentified University athletic trainers and to the head coach of the University's [redacted content] about Employee X's conduct during an appointment. Reporter 4 alleged that her coach responded that Employee X was an Olympic doctor and knew what he was doing.
- Reporter 5, [redacted content], alleged that in or around 2000 she complained about Employee X's treatments to a number of University athletic trainers, but those trainers ultimately told her that Employee X's conduct was not sexual abuse. [redacted content] Reporter 6, [redacted content], alleged that in or around 2002 she told an athletic trainer (Trainer 2) that Employee X had made her uncomfortable during an appointment.
- Reporter 7, [redacted content], alleged that in or around 2002 she told a teammate that Employee X had sexually assaulted her during an appointment, and a then-athletic trainer (Trainer 3) overheard this comment and pulled her aside to ask her if she was serious. Reporter 7 told police that she responded to Trainer 3 that she was not serious.
- Reporter 8, a former patient who, [redacted content], had seen Employee X at the Sports Medicine Clinic for foot pain, alleged to University police that in or around 2013 her mother told a University physician in the Division of Sports Medicine and one of Employee X's colleagues (College Doctor 1), that Employee X had made her "uncomfortable" and she did not want to see him again. Reporter 8 alleged that College Doctor 1 then told her "we get that a lot" and did not ask any follow-up questions.
- Reporter 9, a [redacted content], alleged that during the 2013-2014 academic year she told a University athletic trainer (Trainer 4) that Employee X had made her uncomfortable during an appointment and she did not want to see him again.
- Reporter 10, [redacted content], alleged that in or around 2014 Employee X sexually assaulted her during an appointment with an athletic trainer (Trainer 5) present. Reporter 10 said that she asked Employee X what he was doing during the appointment and

Trainer 5 responded for Employee X that everything was fine.

- Reporter 11, a University graduate who was also enrolled in post-graduate science courses at the University, complained in April 2014 to the University’s Director of Sports Medicine and Performance (the Director of Sports Medicine), that Employee X had sexually assaulted her during an appointment. Reporter 11’s complaint was then forwarded to the University’s Title IX office and a formal investigation ensued. This report and the University’s response are discussed in more detail below.
- Reporter 12, a former patient’s mother, alleged that in or around 2015 she reported to a University doctor that Employee X had touched her daughter in areas that made her daughter uncomfortable.
- Reporter 13, [redacted content] alleged that in or around 2015 she told some receptionists at the Sports Medicine Clinic that Employee X had touched her inappropriately during an appointment.
- Reporter 14, [redacted content], alleged to the University’s Title IX office that during the 2015-2016 academic year, after an appointment during which Employee X “had his hands all over [her] butt” and “in her inner thighs,” she told a then-University athletic trainer (Trainer 6) who was present for the appointment but not in position to see what Employee X was doing, “that was weird.”

OCR requested that the University produce documents relating to University investigations of violations of its policies regarding the allegations that certain University employees knew or should have known about concerns relating to Employee X’s conduct and failed to report those concerns to the appropriate University offices. The vast majority of the information the University provided in response were the statements of the reporters to University police. From the remaining information, it is unclear whether the University conducted any internal investigations of the allegations that its employees received reports about Employee X.

OCR interviewed many University employees who were either alleged to have received a report of concerns about Employee X’s conduct, or who were in a position to receive such reports, including athletic trainers, medical assistants and receptionists, physicians, and coaches. Each of these University employees denied or could not recall receiving any reports or concerns about Employee X’s conduct or behavior.

○ **Reporter 2’s Alleged Report in 1997**

On February 8, 2017, Reporter 2 alleged to University police that sometime in 1997, when she was about [redacted content] and participating in a [redacted content],⁵ she reported to the

⁵ Information on the University’s website indicates that the University’s gymnastics program for pre-college youth, also referred to by the University as a “clinic,” currently provides gymnastics training sessions at the University’s Jenison Field House, and, based on media reports, it appears the gymnastics program has used the Jenison Field House at least since 1997.

Coach, who was the director of [redacted content] as well as head coach of the University's women's gymnastics team, that Employee X had touched her inappropriately.

According to the police report, Reporter 2 told police that the Coach responded to her complaint by saying that she had known Employee X for years and could not imagine him doing anything inappropriate. Reporter 2 alleged that the Coach then conducted an investigation of Reporter 2's complaint by calling some of her teammates into her office to ask each if they had any similar concerns about Employee X. Reporter 2 told police that one of her teammates responded that Employee X had touched her inappropriately, too. According to Reporter 2's report to police, the Coach ultimately cleared her office and, alone with Reporter 2, held up a piece of paper and said, "Well, I could file this but there's going to be very serious consequences for you and [Employee X]." Reporter 2 told police that at that point, she assumed she must have been wrong about Employee X and did not file the complaint.

Reporter 2 told police that at her next appointment with Employee X, at the MSU Sports Medicine Clinic, Employee X confronted her about the concerns she brought to the Coach, and that Employee X was physically rough with her that day.

OCR interviewed Reporter 2 and her teammate. In the interview, Reporter 2's recounting of her alleged report was consistent with her statement to police, her teammate's memory of the report, and her teammate's statement to police.

When University police asked the Coach about this alleged report, the Coach responded, "I have beat myself up trying to remember but I have no idea." The police report notes that the Coach had no additional information.

- **Reporter 11's Complaint in 2014**

On April 21, 2014, upon the advice of her parents, Reporter 11 met with the Director of Sports Medicine, who was her father's friend, to report that she was uncomfortable with Employee X's conduct during an appointment on March 24, 2014, at the Sports Medicine Clinic. Later that day, the Director of Sports Medicine relayed Reporter 11's complaint to an investigator with the University's Title IX office. According to that investigator's notes, the Director of Sports Medicine described Reporter 11's allegations as a sexual assault. The investigator also noted that the Director of Sports Medicine agreed to inform Employee X of Reporter 11's complaint and make sure that a resident always accompany him during appointments.

- **Interim Measures**

OCR reviewed documents and communications relating to the University's actions to protect its community while Reporter 11's allegations were pending against Employee X. That information appears to show that the University suspended Employee X from clinical work for about a month, from the end of May through the end of June 2014. For example, OCR reviewed a list of Employee X's clinical appointments. That document shows that Employee X stopped seeing patients on May 23, 2014—slightly more than one month after the University received Reporter 11's complaint (April 21, 2014)—and then started to see patients again on July 1, 2014—slightly

less than one month before the University sent a draft report with findings to Employee X and Reporter 11 (July 28, 2014).

Communications relating to Employee X's apparent suspension do not make it clear whether the University formally suspended Employee X and, if so, who made this decision. For example, on June 2, 2014, Employee X wrote in an email to the Dean that he had told police that he and the Dean had made a joint decision that he should stop seeing patients because "it was the right and proper thing to do during the investigation." On June 20, 2014, Employee X sent an email to the Title IX investigator assigned to investigate Reporter 11's complaint (who currently works in the University's Office of the General Counsel) (Attorney 1), stating that he planned to return to the Sports Medicine Clinic on July 1. Attorney 1 forwarded Employee X's email to the Dean and an Associate General Counsel for the University (Attorney 2) and wrote that the investigation would not be completed by June 30, 2014.⁶

OCR interviewed University witnesses about Employee X's apparent suspension. The Sports Medicine Clinical Director, Employee X's *de facto* supervisor at the time of the investigation, told OCR that the Dean had told him that Employee X was under investigation and was not permitted to be in clinical practice until the University completed its investigation. The Sports Medicine Clinical Director stated further that he did not play a role in the decision to suspend Employee X. When OCR asked the Sports Medicine Clinical Director who made the decision to suspend Employee X, he responded that he did not know. OCR also asked him if the suspension was under a formal mandate or University policy, and he responded that he did not know.

OCR asked Attorney 1 whether the University suspended Employee X as an "interim measure" under its procedures for investigating sexual harassment complaints. Attorney 1 responded, "I guess." Attorney 1 added that Reporter 11 did not ask for interim measures. Attorney 1 then stated that she was not responsible for overseeing or documenting Employee X's suspension as it was outside her purview, and that the Dean, as the unit administrator for the College, would have overseen Employee X's suspension. OCR asked Attorney 1 whether Employee X's suspension was documented as an interim measure, and she responded that she could not recall whether it was or was not documented as an interim measure. She also stated that she believed Employee X was supposed to be suspended through the end of the investigation, but that it would have been the Dean's responsibility.

While the investigation into his alleged sexual assault of Reporter 11 remained pending, Employee X had 156 patient visits between April 21, 2014, the date on which the University received notice of Reporter 11's allegations, and May 23, 2014, the date on which Employee X stopped receiving patients. From July 1, 2014, the date Employee X returned to clinical work, to July 28, 2014, the date the University sent draft investigative reports to Reporter 11 and

⁶ OCR notes that while the Sports Medicine Clinical Director was Employee X's *de facto* supervisor at the time and the clinical director of the Sports Medicine Clinic, OCR received no documentation showing that either he or the Director of Sports Medicine had any involvement in the University's decision-making process throughout the 2014 investigation. Documentation shows that the Dean (as the unit administrator), Attorney 1 (as the Title IX investigator), and Attorney 2 were the primary employees involved in the investigation.

Employee X, Employee X had 93 more patient visits. In total, Employee X received 249 patient visits during the University’s investigation.

▪ The University’s Investigation

On May 15, 2014, Attorney 1 contacted Reporter 11 about her complaint against Employee X. During the call, Reporter 11 confirmed that she wanted the University to conduct a formal investigation.

On May 16, Attorney 1 emailed the then-Title IX coordinator (Title IX Coordinator 1), with the subject line “Overview of the claim we discussed” and including an attached document. The attachment describes Reporter 11’s allegations as follows: “massaging breast . . . as one would if they were getting intimate [and] touching and massaging butt and vagina . . . as one would if they were getting intimate[.]” Also on May 16, Title IX Coordinator 1 emailed the President, writing, “We have an incident involving a sports medicine doc.” OCR also reviewed a document labeled “[The President]/[Title IX Coordinator 1] . . . Agenda.” The document is dated May 19, 2014, and appears within a folder that has Employee X’s name written on the front.⁷ Item number 6 on this “Agenda” is “C[ollege] [of] O[steopathic] M[edicine] Incident.”⁸

On May 29, 2014, Attorney 1 and a University police detective interviewed Reporter 11. Reporter 11 told the investigators that she had made the appointment with Employee X because she had been having hip pain. Reporter 11 described how, after she mentioned having a stitch in her shoulder, Employee X massaged her breast “full on.” Reporter 11 described the manner of Employee X’s touch as “intimate,” and “like your boyfriend would while you were making out,” and clarified that “it wasn’t touching[,] he massaged it (one hand).” Reporter 11 told the investigators that she told Employee X to stop massaging her breast and that this happened “approximately four times.” Reporter 11 stated that “[Employee X] did not tell her he was going to touch her breast.” Reporter 11 told the investigators that Employee X then told her to lay face down on the table and began to massage her vagina using skin-to-skin contact. Reporter 11 also stated that she told Employee X that he was hurting her, but Employee X did not stop. Reporter 11 told investigators that once Employee X stopped, he exhibited “weird” behavior, such as standing in the corner of the room for between 30 and 45 seconds and that at the time she thought he might have been hiding an erection. Lastly, Reporter 11 also alleged to Attorney 1 that she had told a receptionist at the Sports Medicine Clinic that she wanted to cancel her follow-up appointment with Employee X because Employee X had made her “uncomfortable.”⁹

⁷ According to media reports, on November 21, 2018, the Michigan State Attorney General charged the President with making false or misleading statements to Michigan State police regarding her knowledge of Reporter 11’s complaint against Employee X. According to media reports, the President has admitted that she was told about the investigation but has denied that she knew the details of the allegations or the identity of the doctor, and has denied making false or misleading statements to the police. The charges are still pending in Eaton County District Court; the Court has not yet determined whether the evidence is sufficient for the President to stand trial.

⁸ OCR interviewed Title IX Coordinator 1 regarding her knowledge of the complaint and subsequent University investigation of Employee X’s conduct. She stated to OCR that she was on vacation during this investigation and so was not involved in the investigation. Other investigators from the Department interviewed the President about her knowledge of the complaint against Employee X, and she acknowledged that she knew about a 2014 complaint against a sports medicine physician, but denied knowing the identity of the physician.

⁹ The Title IX office did not interview this receptionist during its 2014 investigation.

On June 9, 2014, Attorney 1 interviewed Employee X. The interview notes indicate that Employee X did not remember the specific appointment with Reporter 11 but responded to Reporter 11's allegations as follows. Employee X stated that he touched Reporter 11's breast in his examination of her shoulder because it was medically necessary. Employee X explained that in order to treat shoulder pain, he would have had to push the breast tissue out of the way to get to Reporter 11's ribs. Employee X disputed Reporter 11's characterization of the touch as a massage and stated that he would call it palpating or manipulating, and that he would have been compressing her ribs. Regarding Reporter 11's allegation that Employee X sexually assaulted her, Employee X told Attorney 1 that Reporter 11's description of what he did was standard operating procedure for a treatment technique he frequently used to treat hip pain. Employee X explained that he would have manipulated in the pelvic floor area. Regarding Reporter 11's allegation she told Employee X "stop, you're hurting me," Employee X stated that he would have taken this statement as an indication of pain and changed hand positions—not stopped the treatment altogether. During the interview, Employee X also named a number of witnesses, including Trainer 5, who Employee X described as his "verbal consent form," and College Doctor 1.

On June 10, 2014, Attorney 1 interviewed College Doctor 1, who described herself as Employee X's "very good friend []." College Doctor 1 told Attorney 1 that Employee X "gets people better that don't get better." She stated that she was completely convinced that Employee X was not touching sexually because of her many years of observing his treatment styles and techniques. She also told Attorney 1 she knew that Employee X explained everything to patients before exams. And, in an apparent response to Attorney 1's phrasing of Reporter 11's allegation that she told Employee X to stop and that he was hurting her, College Doctor 1 told Attorney 1 that Employee X probably moved his hand.

By June 10, 2014, Attorney 1 had completed her intake interviews with Reporter 11 and Employee X and determined that there was no factual discrepancy between what Reporter 11 alleged happened at the appointment and Employee X's standard operating procedure. On June 10, Attorney 1 wrote in an email to the Dean and Attorney 2 that "[a]t this point there is not much discrepancy in terms of the two stories about what occurred" and "what remains is whether the alleged conduct is medically appropriate (as opposed to sexually inappropriate)."

On June 19, 2014, Attorney 1 interviewed Trainer 5. Trainer 5 told Attorney 1 that she estimated that she worked directly with Employee X for an average of four hours each week for 17 years. Trainer 5 told Attorney 1 that she believed that Employee X had no inappropriate intent. Trainer 5 added that she "really respected" Employee X, and that her opinion was that Employee X was "very professional" and "extremely smart."

On June 18, 2014, Attorney 1 sent an email to the Dean to ask whether he would provide the names of a few doctors of osteopathic medicine who could offer opinions as to whether Employee X's conduct was medically appropriate. Attorney 1 clarified that she preferred names of doctors who were not "directly involved" with Employee X's practice.

The following day, the Dean responded by providing the names of two physicians, the chair of the College (the College Chair), and a sports medicine physician for the University who was a

member of the College faculty (College Doctor 2). The Dean wrote that “[b]oth are solid and are objective.” On June 20, Attorney 1 interviewed the College Chair. The College Chair told Attorney 1 that she had known Employee X since 1988, had been classmates with him, and taught a continuing education course with him once a year. The College Chair told Attorney 1 that she would “never” say that Employee X would have any intent in an exam other than purely professional.

On July 1, Attorney 1 interviewed the other physician, College Doctor 2. College Doctor 2 told Attorney 1 that she had known Employee X since 1995, and that Employee X had been just ahead of her in residency. She added that Employee X was her attending physician when she was a fellow in the Division of Sports Medicine, and that her daughter was Employee X’s patient. At one point in the interview, according to Attorney 1’s notes, College Doctor 2 provided her “guess” that Employee X had just touched the side of Reporter 11’s breast, and not “full on front” as Reporter 11 had alleged.

On or around July 10, Attorney 1 met with Reporter 11. The University provided no documentation of what occurred at this meeting, but OCR interviewed both Reporter 11 and Attorney 1, and their accounts indicate that Attorney 1 told Reporter 11 that she had interviewed medical professionals and that her investigation had concluded that Employee X had provided her legitimate medical treatment and had not sexually assaulted her.

On July 28, Attorney 1 sent a cover letter and a copy of her final draft report to Reporter 11. In the cover letter, Attorney 1 wrote that Reporter 11 had until August 4 to suggest modifications to the report, but that she could not guarantee that suggested modifications would be made. Also on July 28, Attorney 1 sent a cover letter and a copy of a different final draft report¹⁰ to Employee X with the same offer, timeline, and caveat regarding suggested modifications to the report.

¹⁰ Specifically, the report sent to Employee X contains a verbatim copy of the information sent to Reporter 11, plus the following additional paragraphs:

We find that whether medically sound or not, the failure to adequately explain procedures such as these invasive, sensitive procedures, is opening the practice up to liability and is exposing patients to unnecessary trauma based on the possibility of perceived inappropriate sexual misconduct. In addition, we find that the failure to obtain consent from patients prior to the procedure is likewise exposing the practice to liability. If procedures can be performed skin-on-skin or over clothes in the breast or pelvic floor area, it would seem patients should have the choice between the two. Having a resident, nurse or someone in room during a sensitive procedure protects doctors and provides patients with peace of mind. If “touching is what DO’s do” and that is not commonly known, perhaps the practice will want to consider a disclaimer or information sheet with that information provided to the patient up front.

Finally, we believe the practice should consider whether its procedure for intake of complaints about physicians’ behavior is adequate. [Reporter 11] claims she tried to file a complaint with the front desk receptionist, telling her that she was cancelling her appointment because she felt “violated.” Whether this triggers a reporting protocol should be examined by the practice.

▪ The University’s Findings

Attorney 1’s final draft report includes summaries of the interviews she conducted. Interviews with College Doctor 1, the College Chair, College Doctor 2, and Trainer 5 are broken out into a separate category of witnesses, under the subheading, “Physicians and treating professionals practicing in this area.” In describing the reason for interviewing these witnesses, the report states that “[i]n order to analyze [Reporter 11]’s claim, it was necessary to consult with medical professionals in the area since [Employee X]’s defense is that his conduct was medically appropriate.” The report also states that the Title IX office “consulted with manipulative medicine physicians in the area for other opinions related to the appropriateness of the procedure medically.”

After describing the witness interviews, the report provides “[f]indings.” The findings section starts as follows: “there are two key issues: (1) what we believe occurred and (2) whether the conduct we believe occurred constitutes sexually harassing conduct.” For the first issue, the report states, very briefly, that the “vast majority” of the conduct went undisputed. This section does not address any lingering discrepancies between Reporter 11’s characterization of the conduct, such as her description of Employee X’s touch as “intimate” and “like [a] boyfriend,” and Employee X’s characterization of the same conduct, that he was palpating and manipulating and otherwise following his standard operating procedure.

For the second issue, the report focuses on “whether [Employee X’s] conduct was medically appropriate (inferring, obviously, non-sexual in nature).” At the outset of this section, the report states that all of the physicians interviewed, and also the athletic trainer interviewed, “concurred that the conduct alleged was medically appropriate.” The report addresses the credibility of these medical witnesses, and ultimately concludes that while College Doctor 1 and Trainer 5 worked in the same clinic as Employee X, the College Chair and College Doctor 2 did not. The report states: “All medical professionals were very credible, knowledgeable and thorough in their medical opinions and have a great deal of experience in the field—35 years total combined with regard to the physicians and 17 years with respect to [Trainer 5].”¹¹ The report does not address whether the Title IX office contacted or interviewed any medical professionals not connected to Employee X or the University. The section ultimately concludes that the Title IX office “cannot find that the conduct was medically inappropriate and thus, cannot find it was sexual in nature.” In other words, the University’s investigation concluded that Employee X had not violated the University’s policies prohibiting sexual harassment.

On or around August 2, 2014, the University’s Title IX office completed its investigation of Reporter 11’s allegations.¹²

¹¹ OCR spoke to a current University Title IX investigator, who stated that she read the 2014 final report and had concerns about bias. She stated that she recalled thinking that the investigator should have interviewed an independent expert and clarified that by “independent” she meant someone who was not connected to the University.

¹² It appears that the University never sent final reports to Employee X or Reporter 11. Presumably, this is because neither party responded to the University’s request for suggested modifications. Without a final report, however, OCR cannot say for certain when the investigation officially concluded.

OCR asked Attorney 1 whether she interviewed any of the witnesses as medical experts. Attorney 1 responded that she interviewed two witnesses, the College Chair and College Doctor 2, as medical experts, and the purpose of those interviews was to learn about the procedure at issue. Regarding potential bias of these expert witnesses, Attorney 1 stated that it would be “far-fetched” to think that either witness would “lie” about the procedure. OCR asked Attorney 1 how she accounted for any potential bias of each witness she interviewed as a medical expert. Attorney 1 responded that she noted any potential biases of the witnesses in the report. Attorney 1 added that when she interviewed the four medical professionals, she did not have concerns about their credibility.

OCR also asked Attorney 1 whether Reporter 11 learned that Employee X’s defense to her allegations was that what he did was medically appropriate. Attorney 1 responded that Reporter 11 did know about Employee X’s defense, and that Reporter 11 would have learned of it at their July 10 meeting at which she told Reporter 11 the findings of her investigation.

On April 5, 2018, OCR interviewed Reporter 11. Reporter 11 stated that the University’s findings made her “feel dumb.” Reporter 11 explained to OCR that between what Employee X did to her and the University conclusion that she did not understand the difference between sexual assault and a medical procedure, she lost interest in becoming a doctor, including in taking the necessary prerequisite courses. Already scheduled to take the Medical College Admission Test (MCAT) on July 12, just two days after Attorney 1 told her Employee X used medically appropriate techniques during her appointment, Reporter 11 told OCR that she lost interest in the test and barely read the questions.

○ **Reporter 1’s Complaint in 2016**

On September 1, 2016, Reporter 1 filed a complaint with the University’s Title IX office alleging that Employee X sexually assaulted her during an appointment in 2000 at the University’s Sports Medicine Clinic.

The Title IX office interviewed Employee X on September 8, 2016. Employee X stated that he did not remember treating Reporter 1 specifically. After reviewing medical records, Employee X contended that he would have been providing her a legitimate medical treatment and disputed her account of what occurred.

On September 12, 2016, *The Indianapolis Star* published an article containing Reporter 1’s allegations against Employee X. On September 16, the University’s Office of the General Counsel sent Employee X a “Notice of Trespass” letter stating that his employment was being considered for immediate termination. That same day, the chair of the Department of Radiology (the Radiology Chair) and the Dean sent Employee X a letter stating that the University had recently received claims alleging that Employee X “deviated from . . . required best practices” purportedly put in place after the 2014 Title IX office’s investigation.¹³ On September 20, the

¹³ According to a July 30, 2014, email from the Dean to Employee X, those “best practices” included minimizing the need for skin-to-skin contact, requiring another person in the room for sensitive procedures, explaining sensitive procedures in detail ahead of performing them, and orienting new personnel to those practices. University officials subsequently referred to these “best practices” as “guidelines.”

Radiology Chair and the Dean cosigned a letter to Employee X stating “[g]iven the seriousness of the issues raised in our letter of September 16, we have no recourse[] but to fire you.”

▪ **Re-examination of Reporter 11’s 2014 Complaint**

On August 30, 2016, the day after Reporter 1 filed her complaint with University police, the police told Reporter 11 about Reporter 1’s complaint. According to the corresponding police report, the police reopened Reporter 11’s 2014 report due to having received “new information.” Also according to the police report, Reporter 11 told police that she wanted to prosecute Employee X.

On December 12, 2016, an investigator with the Title IX office sent Reporter 11 an email with an attached letter stating that the Title IX office was reviewing Reporter 11’s allegations from 2014.¹⁴ However, on December 19, 2016, having not received a response, the Title IX office sent a follow-up email and attached letter, which stated that the Title IX office had “reopened” the 2014 investigation but that it would close the file if Reporter 11 failed to contact the Title IX office that day. The letter added that, if the Title IX office closed the file, Reporter 11 could still contact the University at any time if she wanted to initiate an investigation. In a memorandum dated January 13, 2017, a different University Title IX investigator wrote that she reviewed the Title IX office’s file on Reporter 11’s complaint and also reviewed emails from Attorney 1 to the then-Title IX coordinator (Title IX Coordinator 2) regarding the complaint. The investigator listed three areas of possible concern with the University’s investigation of Reporter 11’s complaint, including that the University failed to interview a potential witness, failed to review Reporter 11’s medical records, and failed to send Reporter 11 a copy of the final investigation report. The University did not produce this memorandum to OCR until February 16, 2019. The University has produced no information to show that the University acted on these concerns.

On February 27, 2017, Reporter 11’s attorney sent the University a letter stating that his firm had been retained to “pursue claims” against the University arising out of Employee X’s sexual misconduct. On March 2, 2017, the Title IX office closed Reporter 11’s file, noting claimant non-participation as the reason for doing so.

On May 1, 2017, Reporter 11’s attorney sent a letter to the University requesting that the University reopen the 2014 investigation. On May 5, 2017, an assistant general counsel with the University’s Office of the General Counsel (Attorney 3) denied Reporter 11’s request, stating “[i]n light of the current circumstances, including the pendency of [Reporter 11]’s lawsuit against the University, it would not be appropriate to once again reopen MSU’s investigation.”

OCR asked the University’s then-Acting General Counsel (Attorney 4) about the decision to deny Reporter 11’s request to reopen her 2014 investigation. She stated that the reasons for the denial were communicated in the letter sent to Reporter 11’s attorney, and she would rather rely on the letter for those reasons. OCR asked Title IX Coordinator 2 whether the Title IX office has any policy for what to do with Title IX complaints that raise issues that are a part of concurrent

¹⁴ For clarity, OCR notes that while the University’s police department and Title IX office sometimes share relevant information and occasionally conduct joint intake interviews with complainants, the police and the Title IX office operate completely independent of one another and conduct separate investigations using different procedures.

litigation involving the University. She responded that she was not aware of any such policy. She added that the Office of the General Counsel would make the decision about what to do.

At the same time that the University was determining how to handle the evidence corroborating Reporter 11's 2014 allegations, it was also communicating with OCR about its obligations under the 2015 Agreement. On December 14, 2016, OCR received an email from the University's Office of the General Counsel stating that, due to an "unfortunate oversight," the University omitted the Reporter 11 file from its review of all sexual harassment complaints filed in the 2011-2012 through 2014-2015 school years. On March 17, 2017, OCR received another email from the Office of the General Counsel, stating that it was reviewing all previously omitted case files to determine whether it needed to take any additional action. On January 30, 2018, the University sent OCR the results of the review. Those results imply that the University concluded that it had properly handled Reporter 11's 2014 grievance and that no additional action or remedies were warranted. When OCR asked Title IX Coordinator 2 whether she identified any problems with this investigation, she identified the failure to follow up on Reporter 11's statements about Employee X having an erection as a concern that she expressed to the University's Office of the General Counsel. As noted above, on February 16, 2019, the University produced a memorandum dated January 2017, in which a Title IX investigator expressed additional concerns with the University's investigation of Reporter 11's complaint.

▪ The University's Findings

By March 17, 2017, the University had completed its final investigative report for Reporter 1's complaint. The University determined, by a preponderance of the evidence, that Employee X violated the University's policies prohibiting sexual harassment. In reaching this conclusion, the University determined that Employee X's conduct was "sexual . . . regardless of whether it was done for a medical purpose." The Title IX office also relied on an interview of a doctor who was not affiliated with the University for information about his practices and procedures for treating the pelvic floor.¹⁵

By the end of the 2016-2017 academic year, the University's Title IX office had received 25 complaints and conducted five full investigations, including the investigation into Reporter 1's complaint. In all five of the completed investigations, the Title IX office concluded that Employee X violated the University's policies against sexual harassment and that Employee X's conduct was "sexual . . . regardless of whether it was done for medical purposes." Notably, in each one of the final reports for these five investigations, the Title IX office considered statements from other claimants who made similar allegations against Employee X as support for its conclusion that Employee X had violated the University's sexual harassment policies.

According to an email from Attorney 4 to OCR, at some point in the 2016-2017 academic year, the University decided to provide each new claimant the option to provide a statement instead of conducting a full investigation. Specifically, an investigator would give each claimant the choice to either provide a statement detailing as much information about their claim as they would want

¹⁵ The doctor interviewed had gone to medical school with Employee X, but that appears to be his only connection to Employee X.

to share and have this statement forwarded to the Title IX coordinator for review, or request that the Title IX office conduct a formal investigation.

To date, the University has received numerous complaints from students or former students alleging that Employee X sexually assaulted them. Most of these alleged assaults occurred at a University facility, such as at the Sports Medicine Clinic or Jenison Field House. The University's Title IX office has formally found Employee X responsible for sexually assaulting one former student.

- **Employee X Pleads Guilty to Criminal Charges; University Settles Civil Lawsuit**

On November 22, 2017, Employee X pleaded guilty in Ingham County Circuit Court to seven counts of criminal sexual conduct similar in nature to the conduct that University students alleged. On November 29, 2017, Employee X pleaded guilty in Eaton County Circuit Court to three counts of criminal sexual conduct.¹⁶ Additionally, plaintiffs, including current and former University students, alleged in civil litigation that Employee X sexually assaulted them during medical appointments to treat injuries and pain relating to their participation in University programs. The University reached a settlement with those plaintiffs, reportedly for around \$500 million.

Evidence Obtained Regarding the Dean

On February 9, 2018, nearly 17 months after the University fired Employee X for failing to comply with the “best practices” allegedly put in place after the 2014 Title IX investigation, the University initiated tenure revocation proceedings against the Dean, for failing to enforce the recommendations. Shortly thereafter, OCR opened this investigation, after which more information came to light publicly about the Dean. At the same time, OCR reviewed evidence the University provided relating to the Dean that raised serious concerns regarding the University's Title IX compliance. OCR therefore investigated the Dean's behavior and the University's response to it.

- **Professional Background and Roles at the University**

The Dean started his employment at the University on December 1, 1998, as senior associate dean of the College, and became the dean of the College effective April 15, 2002. He was a dean for nearly 16 years, until he retired on June 30, 2018, prior to initiation of the University's tenure revocation process but after the State filed criminal charges against him in Ingham County Circuit Court, including charges of criminal sexual conduct.¹⁷

¹⁶ Employee X also pleaded guilty to federal child pornography charges on July 11, 2017.

¹⁷ On June 12, 2019, the Dean was convicted on two counts of willful neglect of duty and on the common law offense of misconduct of a public official. On August 7, 2019, the Dean was sentenced to one year for each of the misdemeanor counts and eleven months for the felony count. This is discussed in greater detail below.

- **History of Reports and Complaints**

Documents show that, throughout the Dean's 16 years as dean, students, faculty, and staff reported the Dean's comments and behavior. These comments and complaints reached the highest levels of the University's administration, including the president, three provosts, advisors to the provost, several assistant provosts, the Office of the General Counsel, and administrators within the College. The former associate chair of the Department of Radiology, who was a member of a committee that reviewed the Dean in 2010 and 2015, told OCR that anyone in the College or holding an administrative position knew about the Dean's inappropriate comments and behavior towards women, which he described as being "widely reported."

- **2004 Student Program**

In October 2004, the President, who was provost at the time, received a memorandum from the Vice President and the Associate Vice President for University Development regarding complaints against the Dean for making inappropriate comments about female students.¹⁸ The memorandum, dated December 21, 2004, apparently written solely to inform the President (provost at the time) of the student complaints regarding the Dean's comments, reported that more than 20 students had "expressed concerns" to their supervisors regarding comments the Dean made on October 19, 2004, at an evening event of a student-run program.

According to the memorandum, the students told their supervisors that the Dean's comments were offensive and that they were surprised that the Dean "could get away with speaking to college students like that." For example, one comment stated as follows: "When trying to provide examples of OsteoMed practices, he turned to a female student and commented to the effect, 'You probably take birth control,' and went on to discuss the practice." Another comment stated: "After asking if anyone had questions, one woman raised her hand, in plain view of [the Dean], and he commented to the effect, 'Yes Sir, Ma'am, Sir, I can't tell, what's your question?'" The official who followed the President as acting in the position of provost (Provost 1) told OCR that an assistant provost (Assistant Provost 1) told him that people were upset about the comments.

The University did not provide evidence indicating that it did anything to address the student complaints until more than six months later, when it responded to issues related to the Dean's behavior and comments that arose in his 2005 five-year review as dean.

- **Undated Memorandum from Concerned Medical Students**

On October 24, 2018, the University produced a copy of a memorandum that the then-interim president of the University received in an email attachment on February 8, 2018, and that the University's Title IX office received by February 9, 2018.

¹⁸ *The Lansing State Journal* reported that the President told Michigan State Police in May 2018 that she first learned of the Dean's behavior in 2003, when she was the provost, but that the provosts who followed her would have been the right people to take action.

The undated memorandum is from a group identifying themselves as “[c]oncerned medical students.” It does not name the recipients, but it references an “appended address list.” The University did not provide OCR with a copy of an appended address list. The memorandum describes events involving the Dean occurring between 2004 and 2008. The memorandum states that, in the spring semester of 2005, the Dean asked one of his students in a clinical skills course to perform a digital rectal exam on him. Other students witnessed this incident and witnessed a student and the Dean go into another room where they believe the student performed the rectal exam on the Dean. The student later told his classmates that he performed the rectal exam out of fear that he would otherwise fail the course. The memorandum also states that in the fall semester of 2004 the Dean required four students to perform pelvic exams on female models who were 19 years old, in violation of the University’s code of teaching responsibility. Finally, the memorandum describes a lecture the Dean gave to the class of 2008, in front of 151 students, as well as faculty and staff, in which the Dean made an offer to allow anyone to perform a digital rectal exam on him for \$50,000. In the conclusion of the memorandum the medical students expressed the hope that “those receiving this information” would “be interested enough to undertake further inquiry into these events, both recent and similar ones over the last five years not even mentioned above.” The University has provided no additional information to OCR regarding this memorandum.

○ **2005, 2010, and 2015 Five-Year Reviews**

Shortly after the President, as provost at the time, was notified of the student complaints regarding the Dean’s 2004 comments, Provost I was preparing to conduct a five-year review of the Dean, which was to be completed by May 2005. The University’s current provost (the Provost) told OCR the five-year review was a “360-degree review” similar to the faculty tenure/promotion process, wherein the provost, to whom all the college deans report, works with a College Advisory Council (CAC), consisting of elected members from among faculty and students of the College. In conducting the review the University takes into account the written input of faculty, staff, and students, information gathered during meetings, responses to carefully constructed questions that can be answered anonymously, and input from other college deans, individuals outside the University, and from the dean being reviewed.¹⁹

After gathering this information, the CAC summarizes it, and may meet individually or collectively (or both) with the provost, and the provost then meets with the dean and reports back to the CAC as to the conclusion reached based on the review.

The University conducted three of these reviews of the Dean during his tenure as dean of the College, in 2005, 2010, and 2015, under three different provosts, and at the end of each review the University reappointed him as dean of the College. The process did not change substantially from 2005 through 2015. Each of these reviews contained similar reports by students, faculty, and staff about the inappropriate comments and behavior related to sex made by the Dean.

¹⁹According to the Provost, the University reviews its deans every year on an informal basis and completes a more thorough review every five years. The annual reviews culminate in a conversation with the dean but the Provost said that generally she does not produce anything in writing, and the University produced no formal annual reviews for the Dean by any provost during his employment with the University.

▪ **2005 Five-Year Review**

Provost 1, who was acting provost in 2005, worked with three assistant/associate provosts; Assistant Provost 1, the Provost (who was at the time an associate provost), and a third assistant provost (Assistant Provost 2), as well as the senior advisor to the provost (the Senior Advisor), to gather input on the Dean for his five-year review. In April 2005 all of these administrators provided Provost 1 and each other with a memorandum summarizing the information they gathered about the Dean from interviews with different individuals within the College.

The Senior Advisor stated in her memorandum that she conducted 11 interviews with people who interacted with the Dean at different levels and with different frequency: major administrative staff, members of the CAC, chairs of departments in or jointly reporting to the College, and faculty members. The memorandum included the Senior Advisor's summary of comments provided about the nature of some of the reports of the Dean's remarks that she felt needed "to be noted." She stated that two people commented that the Dean is "reputed to have made inappropriate remarks to young women: one thought that this had probably toned down; the second modified 'inappropriate' with 'bridging on sexual harassment' and suggested that he needed to be more careful." The Senior Advisor further stated:

The third referred to a report from a constituent of off-color, sexist remarks, accompanied by physical pushing against a student at a public event. This apparently occurred at an event where alcohol was involved and in the context of telling a particular story, and was observed by at least one other student. In response to my question as to whether the student had reported this to anyone, the answer was no, but that she would be willing to come forward if there were other such situations reported. Two other sexist verbal exchanges were noted. Despite these reports, all of the people citing them continue to express their support for the Dean's leadership.

The Provost stated in her memorandum to Provost 1 that she conducted five interviews, including of four chairpersons and the chair of the CAC, and there was strong support for the Dean's reappointment, and praise for most dimensions of his job performance. In the list of specific commentary, however, she stated that she received a "variety of comments on his communication skills, including some referring to gender specific comments."

Assistant Provost 2 told Provost 1 in her memorandum that she spoke with five individuals regarding the Dean's administrative skills, including three chairs and two CAC members. The memorandum included that one individual was not supportive of the view that the Dean was a good administrator, stating that this individual "cited [the Dean's] handling of issues related to sexual harassment in the college."

Assistant Provost 1, who months earlier had been involved in the University's handling of the student complaints about the Dean's comments, summarized the comments he gathered in 30-minute meetings with members of the CAC, three faculty members, one student, and three chairpersons of clinical departments.²⁰ His summary included the following:

²⁰ The memorandum also included a summary of the commentary he obtained from individuals who were not affiliated with or employed by the University.

There was a general commentary from all those interviewed regarding the impropriety of [the Dean]’s comments in public and quasi-public environments such as clinical settings. This is viewed as a problem and generally thought to be offensive to faculty, staff, students and members of the public. Several commentators seemed to imply that this behavior had to be accepted as reflected in the statement “well that’s old [the Dean’s first name].” But others expressed serious concern regarding this dimension, particularly regarding his role as Chief Academic Officer [sic] of the College.

In its responses to OCR’s data request, the University also provided a document titled “[The Dean], Spring 2005 Review, Comments Regarding Inappropriate Remarks.” The document includes a number of entries under the category of inappropriate remarks, including the following:

- The talk he gave bordered on obscene—and was not appropriate for the audience. Not everyone grew up in the military with an all male [sic] system, where off-color sexual comments, discussion of dress, etc. are tolerated.
- Frequently makes inappropriate comments (crude jokes, comments about sex) in public settings.
- Occasionally I blush at his coarseness and lack of discretion. “Bull in a china shop” is the metaphor that springs to mind. It’s possible that he could seriously embarrass [the College] at some point.
- I also think that his references to things sexual and alcoholic impede his effectiveness in the professional setting.
- I have overheard the Dean make sexual comments and jokes that I consider inappropriate, especially in the workplace.
- He must avoid regrettable references regarding gender issues that may be offensive to some.

Assistant Provost 1 characterized the concerns raised about the impropriety of the Dean’s commentary in public and quasi-public settings, involving faculty, staff, students, alumni, etc., as “persistent” and “serious” in an email to Provost 1.

Provost 1 told OCR that he did not believe he forwarded any concerns about the Dean to the Title IX office.²¹ Attorney 4²² indicated in a memorandum, however, that on June 7, 2005, she, Provost 1, and Assistant Provost 1 met with the Dean regarding the students’ complaints from

²¹ Provost 1 told OCR that the only issue he could recall concerned comments the Dean made at an alumni or donor event that resulted in a meeting with Assistant Provost 1 and Attorney 4. The University did not provide any documentation describing an alumni or donor incident specifically fitting this description occurring in 2005.

²² Attorney 4 later became the deputy general counsel and then interim general counsel before resigning her employment with the University in 2018.

October 2004 as well as the comments that arose during the Dean's five-year performance evaluation. The memorandum states that Attorney 4 "outlined the analysis done when faced with a complaint involving comments of a sexual nature. [She] also outlined the elements necessary to constitute a violation of the University's Policy on Sexual Harassment."²³ However, in the cover sheet for the memorandum addressed to the Dean, she wrote that "[a]s indicated at that meeting, this will only be in my files."²⁴

Provost 1 said that he asked the Dean if he made the alleged comments at the student-run event the previous October. The Dean responded that he was just joking. Provost 1 told OCR that he took the Dean's response as an acknowledgement that it was true. According to Provost 1, he told the Dean that what he heard the Dean say was intolerable for anyone to say, especially a dean, and that any future recurrence would not be tolerated. He said that there was a clear understanding at the meeting that they would not tolerate comments like that in the future. Attorney 4 told OCR that she did not believe that the University took any disciplinary action against the Dean for the comments, although she also recalled that Provost 1 told the Dean that he would be disciplined if he made any additional unprofessional comments.

OCR obtained handwritten notes of the June 7, 2005, meeting, the authorship of which is unidentified. The notes include two notations with stars next to them, as follows:

- * need to protect self + MSU from liability
- * Only way to do that – zero further comments

The notes also indicate that at the June 2005 meeting they discussed that the comments from the 2004 student event and the 2005 evaluation were not severe enough to constitute sexual harassment, from the perspective of the meeting participants at least, but that they needed to make sure that the comments did not become persistent and pervasive, which, in looking at "the entire history," meant zero comments from that point forward.

In addition, the notes indicate that they discussed asking Title IX Coordinator 1, who was the Title IX coordinator at that time, whether she had heard of complaints, and whether there was "anything out there" that the note-taker characterized as "true harass't/discrim. that may change things in terms of response." There is also a notation to "make sure there's nothing more serious out there."

On June 15, 2005, Provost 1 sent a memorandum to the faculty, staff, and students of the College stating that the review of the Dean was complete and that the acting provost was "pleased that [the Dean] has indicated his willingness to continue to serve as dean of the College."

²³ OCR notes that the University produced a redacted version of the memorandum.

²⁴ OCR notes that the memorandum was included in the Dean's personnel file as the University identified it in a document production to OCR, which is inconsistent with the statement of Attorney 4.

▪ **2010 Five-Year Review**

A different provost (Provost 2) oversaw the University's five-year review of the Dean in the spring 2010.²⁵ As with the 2005 review, administrators at the highest level of the University received notice of comments similar to those in the 2005 review. For example, handwritten notes dated April 14, 2010, with the notation "COM CAC re [the Dean] Review" at the top, states: "Troubling comments re sexism—reluctance to discuss by students" and "chauvinistic and sexist." A different page of handwritten notes includes the notation "widespread perception of sexism/chauvinism." At the completion of the 2010 review, Provost 2 told faculty, staff, and students that he was "pleased to report" that the Dean had agreed to continue to serve as the dean of the College and that his commitment "to advancing the goals of the College within the broad mission of [the University]" was reinforced.

At around the same time that the University was conducting its 2010 five-year review of the Dean, the University's Associate Provost and Associate Vice President for Academic Human Resources (Vice President for Human Resources) sent an email to Provost 2, dated April 26, 2010, discussing a plan to address the Dean's behavior and comments. The email provided that the plan was to have the Dean identify a few advisors who could provide him with feedback on his communications at public settings, e.g., faculty meetings. The email described that it was also anticipated that in three years a new group of students would assess the existence of inappropriate communications. At the bottom the email states: "... this is not a situation for 'sensitivity training.' I think with the strategies laid out and a clear statement from you that there will be severe consequences if the behavior continues, he'll change or be out (even if 'he is one of the two best deans we've ever had')."

Provost 2 confirmed in a confidential memorandum to the Dean dated April 30, 2010, that he and the Dean discussed the plan during the Dean's five-year review discussion. The plan required the Dean to contact and charge a group of six individuals (identified by name in the memorandum as his advisors) with providing him feedback on his use of inappropriate comments in both formal and informal communications and interactions. The memorandum stated that in the spring of 2013 the Office of the Provost would canvass students, faculty, and staff at the College to ensure that such comments had been eliminated. The President was copied on the confidential memorandum.

Despite sending the April 26, 2010, email detailing the plan for the Dean, the Vice President for Human Resources told OCR that he had no recollection of the plan. He said that, as far as he knew, the plan was not implemented. One of the proposed advisors, currently the Associate Dean of the College for Southeast Michigan and Chief Academic Officer for the Statewide Campus System (Chief Academic Officer), told OCR she never saw the memorandum, never spoke to Provost 2 about monitoring the Dean's communications and interactions, and was not aware that anyone else was doing that. She also noted that all six of the proposed advisors who were suggested to monitor the Dean's behavior worked under the Dean. The Provost, who presided over the Dean's 2015 five-year review, as she by then had become provost, said that she was not aware that a plan was in place for the Dean. The Provost said that the first time she saw the memorandum was when state police interviewed her (at an unspecified time). The

²⁵ Provost 2 is no longer at the University.

University provided no documents suggesting students were canvassed in 2013 and OCR saw no written reports or summaries of reports from the six named advisors to the Dean in this task.

▪ **2015 Five-Year Review**

In terms of process and outcome, the Dean's 2015 five-year review was largely the same as the 2005 and 2010 reviews.

The former Associate Chair of the Department of Radiology said that he helped conduct the survey of faculty and staff and that there must have been 30 to 40 comments about the Dean's inappropriate behavior reported in the documents presented to the Provost, including:

- [H]e needs to keep his sexual conquests out of conferences where the medical school is being represented. Also, when speaking with female medical students he needs to maintain eye contact instead of jumping between the chest and groin area with his eyes. It is very uncomfortable. Also, [the Dean] needs to stop making off colored *[sic]* homophobic jokes. Not cool and certainly not something I want someone who represents MSUCOM saying.
- In regards to the question about how [the Dean] "Promotes and assures the quality and reputation of the college."/ *A.* I feel that [the Dean]'s history of inappropriate language, public discussions, and stories do not support the college in a positive manner. His sexist remarks and inability to talk with a woman while looking at her eyes instead of her breasts are well known and bring down the respect and reputation of the Osteopathic College. I do not think this is a new issue, instead I think it is something that the College has chosen to ignore, for what reason I dare not imagine and cannot fathom.
- He is often inappropriate at social events and during one-on-one interactions with students.
- I have heard first hand some of the sick and inappropriate things he has done or said.
- Makes inappropriate comments about the appearance of women and sexual relationships with women.
- Continuous comments which are inappropriate and sexually related. Tends to put a sexual or crude spin on most conversations.
- I believe [the Dean] is very negatively affecting the college's reputation. I have been to offices on the East side of Michigan, West Side of Michigan, and in Northern Michigan and have consistently heard extremely unprofessional remarks about [the Dean]. I have heard allegations from physicians and students of the Dean taking sexual favors for admission consideration. Allegations from physicians of the Dean admitting to sexual activities with underage women in foreign countries at dinner events when alcohol was consumed. I have heard from attending physicians of their strong distaste for his unprofessional remarks. From my own experiences, I have witnessed unprofessional and

sexual comments from the dean about female students - including remarks from the dean of a female colleague wearing “come fuck me heals [sic]” and another instance where he admitting [sic] to knowing a student for a long period and how “she has certainly filled out nicely[.]” I defend the college from these remarks, and do not take part in here-say [sic], but am ashamed that the dean has so negatively portrayed the college in so many different areas in Michigan and that these unprofessional comments come from so many different sources at different periods of time and from so many different offices. Several attending physicians who have shared dinner events with the dean have shared concerns of his stories of sleeping with underage women while in a conference in Thailand. I defend the college and do not repeat these stories and would like from [sic] them to not be true, but with their frequency from so many sources, and with my own observations of his unprofessionalism, I am very concerned for the reputation of our college.

- [The Dean] should not interject sex into every conversation with staff and students.
- As a female faculty, an argument may be made that I could have the possibility of being treated better than my male counterparts, especially if I have a pretty face, and a curvaceous figure, well-dressed in short skirts and low-cut tops. However, since that is not my style, I would say that I am not treated fairly. Or, to look at it another way, perhaps we're all treated like dirt, but the lack of transparency keeps us from seeing the mud on each of our own faces.
- Makes inappropriate sexual references.
- Fellow colleagues do not have high regard for this man. He is an embarrassment to our school with how he treats women, his rumored affairs and drinking habits, and his consistent rude and unfriendly behavior toward students.
- Multiple sexist remarks and actions while representing the College []/[sic]Public intoxication when representing the College.
- He has made several female students feel uncomfortable in social gatherings. Students are tired of him bragging about his extramarital affairs too. [] He simply does not treat people with the respect that people deserve. [] Please choose a more professional dean.
- The reputation the Dean currently holds throughout several areas of Michigan is extremely negative with many cases of unprofessionalism. Whether true or false, I believe it is dire that the reputation of the college be repaired and these rumors either verified or discredited in order to maintain a positive outlook on the college as a whole.
- [The Dean] does not maintain professional relationships with students. At our orientation session he made jokes about how much he enjoyed female students wearing short shorts and how we might see him at strip clubs. His behavior was completely unprofessional and embarrassing especially since he was lecturing the new students about how we need to behave professionally. Additionally, as I and two of my female classmates were exiting an elevator to get our pictures taken during orientation, he said, “Oh, did you

know they are only taking nude photos after 1 pm?” He is completely unprofessional towards students, and as our dean he should not be making jokes like this. I am embarrassed by his behavior.

- Perpetrates constant sexist comments[.]
- Talks with students about inappropriate topics. Makes sexual comments. Have personally overheard multiple inappropriate and offensive remarks regarding race and sex which paint a troublesome picture.
- [The Dean] does not effectively represent the university or enhance its reputation when he is making sexist comments and inappropriate jokes to the student body.
- On every occasion I have interacted with the Dean outside of his actual office, I have heard a lewd story. I know the Dean believes that as future physicians we need to be “able to handle” lewdness and sexual behavior (which is true), but often they seem inappropriate for him to be telling them. Sometimes it feels like he is almost trying to impress me with the story more than impress on me the importance of being able to listen to a lewd story. This has definitely taken away from my respect of him.
- Sometimes he makes comments to females that border on sexual harassment. Also participates in sending/receiving inappropriate emails of a sexual nature.

At the conclusion of the review the CAC provided a four-page summary of its work, dated June 4, 2015, that it shared with the Provost and the Vice President for Human Resources. The summary described the CAC’s purpose as being to “distill from the totality of the responses the essence of the Dean’s leadership effectiveness.”

Under a section of the summary titled “Communication and Human Relations,” the CAC wrote:

The Committee acknowledges and has discussed multiple allegations made by respondents -- appearing to come from students, faculty and staff -- relevant to the Dean’s interpersonal behavior and communications, particularly with members of the opposite sex. Since these are allegations from anonymous individuals, which the committee cannot verify, nor has the power to investigate if there is any substance, we bring it to the attention of the University Administration.”

The former [redacted content] told OCR that he drafted that paragraph. According to him, the CAC tempered the report by noting that the allegations were made anonymously, but they gave the report to the Provost and the Vice President for Human Resources so that they would take action. Under the section titled “Personnel Management,” the CAC wrote that some respondents “mentioned favoritism, particularly to attractive females and inappropriate sexual references.” The CAC also noted, under overall performance, that there were concerns about “unprofessional conduct.”

The Provost said she went through every paragraph of that CAC summary with the CAC, and that, when the CAC said they were bringing their concerns about the multiple allegations regarding the Dean's behavior toward women to the attention of "University Administration," that meant they were bringing it to the Provost's attention. The Provost wrote on a copy of the CAC summary the words "sexual harassment" and "discrimination" but she told OCR that she did not recall if there was a concern that the allegations raised issues of sexual harassment and said she did not know why she wrote those words. In her interview with OCR, the Provost drew a distinction between language and behavior and said that she was not concerned about the Dean's behavior because she felt she had no information at that time related to behavior.²⁶

The Provost told OCR that she talked to the Dean about his role as a representative of the University, explaining that she raised it as a "persistent problem," to which the Dean replied that he was getting better with these issues. She also said that she told the Dean that she had a concern about his language, but she told OCR that she did not, at that point, have any information about complaints about the Dean's behavior toward women. The Provost said she also spoke to the Dean about the report that he told stories of sleeping with underage women while in a conference in Thailand. The Provost said that in response, the Dean said he had never been to Thailand and thus could not have told the story. An email dated June 11, 2015, from the Provost to the Vice President for Human Resources states: "Finished with my meeting. He says he's never been to Thailand. ☺"

In addition, the Provost said that she met with the CAC and the President about whether to reappoint the Dean. Although the Provost told OCR that she did not have a distinct memory of her meeting with the President, it was likely that she and the President would have discussed the reasons to reappoint the Dean, as well as the concerns, which she identified as his role as a fundraiser, his language, and his demeanor.

In addition to these meetings, according to the Provost and several others, the Vice President for Human Resources organized a meeting attended by only the Provost and women in leadership (associate deans and chairs) at the College, without any other administrators present. The Provost said that she thought at the time that the Dean "had a bad mouth but was not a bad man," and she wanted to talk to these women (whom she described as "strong women"). The Provost said that she did not take any notes; she wanted the women to be able to talk to her frankly and did not want them to feel they were at risk. She said that she did not go into the meeting hoping to gather "bad stuff" on the Dean but did want the women to be able to talk about any mistreatment they may have felt they experienced. She told OCR that at the end of the meeting the women told her that there were more women in leadership at the College than at any other college at the university, and that the Dean gave women a chance if they could do the job. She

²⁶ In its 2014 policies the University defined sexual harassment as "unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome behavior of a sexual nature when, among other things, such behavior is so severe, persistent, or pervasive that a reasonable person would find that it: a) alters the terms or conditions of a person's employment or educational experience, or b) unreasonably interferes with an individual's work or performance in a course, program, or activity, thus creating a hostile or abusive educational environment." Examples included unwelcome or persistent sexually explicit statements or stories which are not legitimately related to employment duties, course content, research, or other University programs, or activities. Another example was repeatedly using sexually degrading words or sounds to describe a person. Another was recurring comments or questions about an individual's sexual prowess, sexual deficiencies, or sexual behavior.

said she may have discussed this meeting with the President. However, there is no documentation to reflect what was discussed or what action, if any, was taken. The Provost said that she took no other action to address the multiple allegations that the CAC brought to her attention.

On June 16, 2015, the Provost sent a memorandum to the faculty, staff, and students at the COM stating that five-year review was completed and that she was “pleased to report that [the Dean] has agreed to continue to serve as Dean.”

On May 1, 2018, the Provost posted this statement on the University’s website:

More than a year before the national accounts of [Employee X] came to light, I made a decision to reappoint [the Dean] to another term as Dean of the College of Osteopathic Medicine. We had just completed his five-year review where input about his effectiveness was solicited from on and off campus through an anonymous survey. The results included several accounts of inappropriate remarks and a number of concerns about uncouth and sometimes offensive language during the review period. The concerns raised were taken seriously, and I specifically addressed these in the required post-review conversation. At that point, no complaints had been filed with [the Title IX office] or [the University police department] regarding [the Dean]’s behavior.

When OCR asked the [redacted content] who worked on the CAC whether the Dean’s behavior changed after the 2010 or 2015 reviews, he replied “definitely not.” When asked if he thought that the University’s response was reasonably calculated to end the Dean’s comments and behavior, he responded “obviously not—[the Dean] was totally undeterred.”

○ **Annual College Orientation**

Every year the College holds an orientation ceremony wherein faculty and administrators speak to and welcome the “year one” students of osteopathic medicine to the College. The Dean gave a speech at this event every year. The current Chief Academic Officer said that the Dean was very proud of the speech but some people found it offensive and “tiresome” to listen to, which motivated the College to obtain anonymous evaluations of all the speeches in 2016, in an attempt to revamp the orientation program. She said that when the Dean gave his speech in 2016, they gathered feedback that she shared with the Dean. In 2016, comments included the following:

- Avoid inappropriate comments (i.e. telling the males that if they cannot get one of their female classmates into bed with them then they are a loser).
- As much as [the Dean]’s speech was supposed to provide a reality check to incoming students, I found him to be incredibly sexist and derogatory towards women. I already understood what I was signing up for in terms of workload and social sacrifice but many of his comments came off as aggressive and ostentatious about the roles of women in life, in the workplace, and in school.

- Most of the address was motivational and realistic which was helpful. I did however find some comments to be lewd and unprofessional and I'm not the only one. As the Dean of our school, I know he is not our father, but certain comments I felt were not appropriate.
- I found the comment about being able to “get into a lady’s pants” because we are student doctors a bit offensive. I realize the point [the Dean] was trying to make, but I didn’t agree with his choice of words.
- I was unfortunately not impressed with [the Dean]’s address at orientation or at the White Coat Ceremony. I understand that there were influencing factors, such as getting back from overseas and being jet lagged as well as having a recent drinking incident with a fourth-year med student. However, I did not feel very welcome or encouraged by his talk.
- A few comments were a bit offensive because they were sexist in nature toward women regarding men picking up women and women “having greasy hair.”

Based on the feedback, the Chief Academic Officer told the Dean that he needed to find a different way to express himself. She said that the Dean took umbrage at the feedback, got defensive, and said he would do what he wanted to do. However, she told OCR that she used the results of this survey to encourage the Dean to clean up his speech, and that in 2017 he did clean it up somewhat. According to her, the Dean gave a similar, although somewhat toned-down speech in 2017, and again the College gathered the feedback. Although there were fewer negative comments about the inappropriateness of the Dean’s speech, there were some, including that the Dean’s speech was disrespectful, belittling, offensive, crude, and inappropriate, that he mentioned naked pictures and dancing naked on the table, and that he made people feel uncomfortable. One student offered to speak further about the concerns raised in the review.

The evidence indicates that from 2004 until December 2017, no one reported any of the reports about the Dean from the reviews and surveys to the University’s Title IX office. Title IX Coordinator 1 told OCR that she never received any reports or complaints about the Dean and was not aware of any complaints reaching the Title IX office. Title IX Coordinator 2, who succeeded Title IX Coordinator 1 and was still the University’s Title IX coordinator at the time of OCR’s onsite in April 2018, told OCR that she likewise had no knowledge of complaints or concerns anyone raised about the Dean during the five-year reappointments or from surveys of his orientation speeches. There is no documented evidence that prior to December 2017 the Title IX office investigated the Dean’s behavior.

○ **Reports Concerning the Dean to the University’s Title IX Office and University Police**

On December 14, 2017, the same day that the Dean took a medical leave of absence and stepped down as dean of the College, the Title IX office opened an investigation of two complaints against him.

The father of a [redacted content] student (Reporter 15) reported one incident to the Provost, who forwarded it to the Title IX office. According to the Title IX report, the student alleged that in [redacted content] she met alone with the Dean in his office [redacted content], pursuant to the College policy, [redacted content]. The student reported that, within a minute of her entering the Dean's office, the Dean [redacted content] and then spoke to her for an hour. He asked her what her age was and, after she told him she was 26, the Dean discussed what he and other older men want. He said that his friends want to be with younger women and had the idea that "all a 26-year-old has to do is put out for 20 minutes and then the old guy falls asleep." He said that "these women get to travel the world, go on vacations, and get to spend money and buy things." According to the report, the student felt that it was clear that the Dean was discussing a sexual relationship between someone his age and someone her age—she said that the Dean mentioned the specific age "26" multiple times. The student told the Title IX investigator that "it felt like a favor for a favor," that it was scary and uncomfortable, and that the Dean had control of everything.

According to the Title IX report, the student also said that the Dean mentioned a bar in East Lansing, said that sometimes he can see people pole dancing on the tables, and told her, "I'll bet you'll be dancing on those tables." He mentioned how tall and thin she was and told her it was difficult to send naked pictures to another person because there is a trail. According to the Title IX report, the Dean told the student that if she sent a naked picture and the Dean saw it, the student would be in trouble. The student reported that the Dean "kept going on and on." The student said that the Dean finished the meeting by telling the student that [redacted content]. The student said that the meeting was very upsetting and that she felt that the Dean was trying to take advantage of her and how much she wanted to save her education and her career. According to the Title IX report, the student said she believed that the Dean was implying that if she would do something for the Dean, the Dean would do something for her.

The Title IX report states that the student said she took a [redacted content]. According to the report, the student struggled in July and August 2017, was "completely withdrawn," and could not study for the [redacted content]. She could not sleep and had anxiety over [redacted content] because if she did not [redacted content] she would have to meet with the Dean again. [redacted content]

According to the Title IX report, the student met with the Dean a second time and he used a different tone than that of the first meeting. The Dean told the student that she was not smart enough and should pick a different career. According to the report, the student told the Dean she wanted to help people and the Dean recommended that she work at a soup kitchen. The Dean then told the student that [redacted content] modeled nude for art classes and was a medical model for breast exams, pap smears, and rectal exams. The report states that the Dean then offered to allow the student to take the [redacted content] but she would have to [redacted content] that she would not return to the College to continue her medical studies. According to the report, the student would not [redacted content] and said she was concerned that the reason the Dean would not be more lenient with her was because she would not do what she perceived he had requested in their first meeting.

The Dean responded to these allegations in an email to the Title IX investigator on January 27, 2018, acknowledging that he met with the student. In the email, the Dean described their conversation as a pro forma discussion of whether to allow the student [redacted content]. The Dean indicated that his discussion with the student was like many he had had with other students. The Dean said that he told her he would consider her request after he spoke with others about her past record. The Dean then told her she would have to [redacted content] she would be out of the College; he said he has done that many times in the past with other students. He said he had “no idea where the others [sic] comments have come from.” He did acknowledge, however, that he had “told student [sic]” that [redacted content] was a patient model for the clinical skills course.

In addition, the Dean said he would respond to the allegations more fully in person after June 29, 2018, as the University had requested that he not work on University business until then. The Title IX investigator relayed this information to the student, apologizing for any stress this caused the student, and stating that the investigator would “follow up to ensure the investigation continues to move forward as soon as the Dean returns and has an opportunity to be heard.”

The Title IX office also included the comments that students made regarding the Dean’s orientation speeches in 2016 and 2017 in its investigation of the December 14 complaint. After reviewing the student comments regarding the orientation speeches, the Title IX investigator told Attorney 4 in an email dated January 22, 2018, that “many of the comments talk about how demoralizing and intimidating the speech was and how he made the students feel awful about med school.”

Based on the Title IX report, the Title IX investigator spoke with the Chief Academic Officer as part of the Title IX office’s investigation of this complaint as well as its investigation of the comments on the Dean’s orientation speech. The Chief Academic Officer reported that she knew the student met with the Dean in December 2017, and [redacted content]. She then said that although she had not heard of complaints specifically from women about the way the Dean engaged with them, she did receive complaints from students about the Dean in the past, mentioning the comments on the evaluations from the orientation program. She stated that she heard the Dean say things like “Boys are always going to be interested in going to bed with girls.” She said that she believed that the Dean was this way with men and women. The Chief Academic Officer had not heard that the Dean made comments about pole dancing, being an escort, or being too attractive to be a doctor. As it is recorded, at the end of the interview, the Chief Academic Officer stated that the Dean, “like others,” appeared to be appreciative of attractive young women.

The same Title IX incident report includes a description of another alleged incident occurring about nine years prior to the report that a retired alumna of the College (Reporter 16) reported to the President on [redacted content]. This allegation involved the Dean and an applicant who had been denied admittance into the College. According to the report, the Dean reached out to the applicant a year after she had been denied admission, told her he was going to be in town and was reaching out to students who had been good candidates but had not quite met the criteria for admission the year before, and offered to meet her at a hotel bar to discuss giving her another chance. The report states that the applicant met the Dean at the bar but brought her fiancé with her, where he sat hidden from the Dean’s view. According to the report, the Dean had clearly

been drinking, made inappropriate comments, and invited the applicant to his hotel room. The applicant excused herself and she and her fiancé quickly left, feeling uncomfortable. The report states that the applicant wanted to remain anonymous and did not want to report the incident.

Another incident reported to the Title IX office on March 28, 2018, is based on information obtained from a social media post about the Dean written [redacted content] by (Reporter 17). The University supplemented its Title IX report with a copy of a report by the Michigan Department of State Police involving the same incident. All of OCR's information about the incidents regarding Reporter 17 are from the Title IX report. According to the report, Reporter 17 said that there was a running joke that if you were walking by the Dean in the hallway you better make sure your jacket was zipped up, unless you needed something, and then you better unzip it to be sure to get whatever you needed from the Dean.

Based on the report, Reporter 17 stated that in her second year of medical school [redacted content] and met with the Dean to request a clinical placement near her husband and [redacted content]. The report states that the Dean emailed Reporter 17 prior to a meeting and told her she better wear a low-cut shirt to the meeting if she wanted to persuade the Dean to provide accommodations. According to the report, at the meeting, the Dean yelled at Reporter 17 for nearly 15 minutes; told her she should have taken precautions [redacted content]; intimidated, belittled, and terrified her; and would not help her to get a clinical placement close to her home. When Reporter 17 received a clinical placement close to Detroit, she again requested that the Dean meet with her and her husband. The Dean told her that it was not in her interest to bring her husband to the meeting. She did bring her husband to the second meeting, and, according to the report, the Dean belittled the two of them, told them they should know [redacted content], made a crude joke, and refused to change her clinical placement. When she later learned that a clinical spot had opened in Lansing, she went to a different dean to request placement in Lansing, that dean spoke with the Dean, and she was placed in Lansing but told not to tell anyone.

The report also states that when Reporter 17 was [redacted content] the Dean said in a teleconference meeting with the main campus and two satellite campuses that he fathered her child, humiliating her in front of hundreds of people. The report states that she was sitting in front of the main classroom and all the campus classrooms were teleconferenced into the call when the Dean said that her [redacted content], basically stating, in front of every medical student at the University, that Reporter 17 slept with the Dean. [redacted content]

The report states that after the Dean made the comment about fathering her child, the next time she interacted with the Dean was at her graduation, when she walked across the stage to get her degree. Instead of congratulating her, the Dean said, "Nice red heels, your legs look really hot."

According to the report, the Dean intimidated Reporter 17 and other women who were in the College, they felt that they could not report his behavior without risking their careers, and all of his behavior was dismissed because he was a "military man." She had not reported any of this before because the Dean was in a position of authority and she felt she "just had to take it."

Also on March 28, 2018, a former faculty member at the University's medical school from 2009-2010 (Reporter 18) reported to University police that the Dean said "many inappropriate things" to her and to her colleague. According to the police report, Reporter 18 said that she attended an event in the [redacted content] and sat at the Dean's table. During the event, the Dean showed her pictures of a "fetish festival" with naked people wearing collars, asked her and her colleague to have a threesome with him, and, when they declined, stated that he would get a prostitute. When Reporter 18 mentioned that she was vegetarian, the Dean said, "You don't eat meat? I bet you eat your boyfriend."

Reporter 18 told the University police that she told the Chief Academic Officer about the incident and how uncomfortable it made her feel and that she felt that the Chief Academic Officer "wrote it off" and dismissed it because the Dean was intoxicated and did not mean it. According to the police report, the Dean later "kind of apologized." After that incident, according to the police report, the Dean would come in her office, shut the door, and say inappropriate things that made her uncomfortable. For example, she said the Dean would often use the word "vagina" in conversation for no medical or professional reason. According to Reporter 18, the Dean spoke of sleeping with a former teacher, implying that it was okay to sleep with former teachers. She said she quit her job because of the Dean's behavior. Reporter 18 requested to remain anonymous because she feared repercussions for speaking up.

On March 30, 2018, another individual (Reporter 19) told the Title IX office that it had been reported to him that at a public College ceremony, on a date unspecified, that the Dean looked intently at the chests and legs of female students and said how much he enjoyed looking at them, made dramatic turns and exaggerated looks at female students, and said that it would be a good year, and told groups of students that he possessed great power over them and their futures in medical education and practice. Reporter 19 did not identify the students. Another person (Reporter 20) filed a similar complaint with the Title IX office, also on March 30, 2018, alleging (according to the report) that on numerous occasions the Dean made inappropriate gestures and comments directed toward students. The report cites two examples: if students were wearing tight or revealing clothing the Dean would comment that that was how to get what you want; when a student walked by in a tight dress the Dean would turn his head in an exaggerated fashion and make a "big scene" out of staring at the student as she walked by. On April 4, 2018, an advisor at one of the College campuses (Reporter 21) reported that she was aware that the Dean, in his role as the dean, made inappropriate sexual comments to three medical students.

On April 16, 2018, a counselor at the University reported to the Title IX office that a medical student (Reporter 22) told the counselor that she met with the Dean on campus on two occasions to discuss academic performance issues. At the meetings the Dean discussed being an older man, said that people do favors and do things for him, and said that maybe she would want to give him something. Reporter 22 told the counselor that the entire experience and after-effects of the media exposure were having significant impact on her, including [redacted content].

On April 23, 2018, the President and [redacted content] reported to the Title IX office that they were aware of a former student of the College who had had encounters with the Dean and found him "creepy." A Title IX investigator spoke with the former student, who said that the Dean had behaved inappropriately towards her in September of 2015 and again in January 2016 when he

met with her at a local restaurant to discuss her application for enrollment in the College. The former student reported that the Dean made inappropriate comments during that meeting. For example, the former student said that the Dean told her one of his employees never had an orgasm and never “got wet” and told a story about his students practicing a rectal exam on him. The former student said that the Dean also mentioned a social event in Detroit where everyone got drunk. When the student had to sit out a semester of school because of poor performance she decided to not return to the College.

In addition to these reports, the University received a report concerning comments that the Dean had made in a speech at the College orientation; because the Title IX office had already begun investigating comments the Dean made during his 2016 and 2017 orientation speeches as part of its December 14 complaint investigation, it did not open this as a separate complaint. The University also received a report that a student had heard, indirectly, that the Dean made an anonymous student practice a male examination on him after the student had missed a skills class. The University police also received two other reports from mandatory reporters who indicated that the Dean may have sexually harassed other individuals, but no more detail was available regarding these reports.

The University provided a chart of Title IX complaints it had received and opened related to the Dean, indicating the status of each as of September 28, 2018. This chart indicated that, of 14 total complaints, the University closed or merged eight of the complaints. The other six complaints were marked as open, including the oldest complaint the Title IX office received concerning the Dean, which it received on December 14, 2017. Throughout OCR’s investigation, the University provided no documents showing that it had completed a full investigation of any of the complaints it has received against the Dean²⁷.

On September 17, 2018, the University’s Title IX office sent a letter to the Dean notifying him that in addition to the December 14, 2017, complaint of which he had already been notified, the University intended to formally investigate four additional complaints against him, including the complaints filed against him in March and April 2018.

- **The Dean’s Resignation**

On December 14, 2017, the Dean stepped down as dean of the College due to asserted health reasons. He stated in his letter to the Provost that, as they discussed that day, it was his intention to return to the College following his medical leave of absence. The Provost told OCR that when she spoke with the Dean she told him he could no longer be dean, advised him to retire, and recommended that he do so immediately and leave the institution. At that time he wanted to think about it overnight, and the next morning he asserted his right to go on medical leave.

Starting on February 9, 2018, University administrators recommended initiating dismissal for cause proceedings against the Dean, based on his failure to “monitor and enforce clinical practice guidelines put in place for former doctor [Employee X] following the conclusion of the 2014 sexual harassment investigation.” This occurred more than a year after the University fired

²⁷ OCR received the University’s first monitoring report pursuant to the enclosed agreement on September 3, 2019, concerning its response to complaints against the Dean, and will review and address it under separate cover.

Employee X for failing to comply with the “guidelines.” The Provost stated that the recommendation to dismiss the Dean was based on the Dean’s inappropriate interactions with students, the fact that he had not informed the University about his arrest (which she described as a technicality but still a violation of policy), and complaints about remarks that the Dean made at orientation.

The Provost told OCR that she told the Dean he could no longer be dean of the College for reasons related to Employee X. Specifically, she stated that she already knew that the Dean had not vigorously supervised Employee X after the 2014 complaint investigation, but she had recently learned through interviews that he had not designated anyone else to supervise Employee X either. The Provost noted that the Dean’s office is in a different building at a great distance from the clinical center where Employee X worked. It would have been reasonable for him to designate someone else to monitor Employee X, but he did not. The Provost stated that it was ultimately unclear who was in charge of whom and who had direct responsibility.

On July 5, 2018, the University accepted an agreement in which the Dean retired effective June 30, 2018.²⁸

- **Criminal Charges in Ingham County Court**

On March 27, 2018, the State Attorney General charged the Dean with two counts of willful neglect of duty as a public officer, one count of criminal sexual conduct, and one count of a common law offense in Ingham County District Court. After determining that there was probable cause that the crimes were committed and that the Dean committed the crimes,²⁹ on June 14, 2018, the Dean’s criminal case was transferred to Ingham County Circuit Court. According to a Michigan police-signed affidavit, the neglect of duty charges relate to the Dean’s handling of the 2014 investigation against Employee X.

The felony misconduct in office charge concerns the Dean’s actions regarding four victims, one of whom, identified in the affidavit as Victim 1, had filed a complaint with the Title IX office alleging that the Dean used his position of power to suggest that the student give him sexual favors and send him nude photographs in exchange for leniency on a test benchmark requirement (these allegations are described in greater detail above).

According to the affidavit, the Dean summoned a second victim, Victim 2, to his office after falling asleep in class, where the Dean directed Victim 2 to turn around in a circle twice so that he could observe her body. The affidavit states that the Dean then degraded victim 2’s appearance, told Victim 2 she needed to dress like a woman, said that she would never make it in the profession if she did not dress sexier, and continued on a “harassing ridicule” for about an hour. Victim 2 was summoned to the Dean’s office a year later to discuss an exam but Victim 2

²⁸ Although the Interim Dean of the College and the University’s Vice President and Special Counsel to the President both requested that the University initiate dismissal for cause proceedings against the Dean, OCR has no documentation showing that the University actually did initiate such proceedings and the fact that the Dean was able to retire suggests that it did not.

²⁹ This is the evidentiary standard as articulated on the general information page of the State of Michigan Courts website, <http://courts.mi.gov/self-help/center/general-information/pages/types-of-courts.aspx>

declined to go alone to his office, choosing instead to go to a group counseling session that the Dean ran. At the counseling session, according to the affidavit, the Dean told the group that he held their entire future in his hands and could do whatever he wanted with it. In her third year of medical school, Victim 2 again met with the Dean to address complaints she had about her surgical residency, and he again directed her to slowly turn around twice so he could look at her body. The affidavit states that the Dean told Victim 2 that she needed to learn her place in life and asked her what he had to do to teach her to be submissive and subordinate to men. He then told her that she should not speak about the residency complaints and that if she did, she would have a lot of “burdensome debt” and no medical degree. The affidavit says that the Dean reminded Victim 2 that he had a number of connections both at the University and around the country and that he could run her out of the College and bar her from working in the medical field.

According to the affidavit, in Victim 2’s fourth year of medical school, at a scholarship party, the Dean grabbed her left buttock and gripped it firmly while they were waiting to take a photograph. Finally, a few months later, when Victim 2 saw the Dean, he looked her up and down from her face to her crotch, finally focusing on her chest. Victim 2 felt uncomfortable and asked the Dean to look at her face. He responded, “eye candy, eye candy.”

Victim 3 said that she met with the Dean to discuss an exam. According to the affidavit, he scanned her body up and down several times, making her feel uncomfortable. The affidavit says that the Dean told her that he would allow Victim 3 to retake the exam if she signed a contract agreeing to leave the College if she did not get the necessary score. Victim 3’s exam score fell one point short of a passing grade and she met with the Dean again. At the second meeting the Dean reminded Victim 3 of the contract and asked her what her “Plan B” was since she could not cut it in medical school. He suggested that she become a centerfold model and discussed another female student who became a stripper to pay for medical school. The Dean agreed to allow Victim 3 to take the test again, but called that decision a favor, and told Victim 3 that in return, she would be “required to do anything for him.” Victim 3 understood “anything” to mean anything the Dean wanted sexually in exchange for a favor.

According to the affidavit, a fourth individual, Victim 4, said that she “endured similar experiences as Victims 1-3 and was “not surprised that [Employee X] had been able to victimize so many women under the supervision of [the Dean].” Victim 4 described a conversation she had with the Dean in 2006 or 2007 in which he said that “it was good when women were drunk, because it was easy to have sex with them.” Victim 4 said that in February 2010, at an event, the Dean approached her from behind and grabbed her right buttock. According to the affidavit, Victim 4 did not know what to do because the Dean was dean of the College and had “complete control of her medical career.” She told her boyfriend about the incident but decided not to report it to the University because “she did not want to be thrown out of medical school.”

The affidavit also states that a forensic examination of the Dean’s work computer disclosed pornographic images and videos stored on it, including a video of a female masturbating at close perspective and approximately 50 photos of bare vaginas, nude and semi-nude women, sex toys, and pornography, which was in violation of the University’s Acceptable Use Policy. Based on these allegations, the Dean was charged with using his office to harass, discriminate, demean,

sexually proposition, and sexually assault students. The criminal sexual conduct charge concerned the Dean's reportedly groping a female student. Three women testified at a dismissal hearing on these charges (the motion to dismiss was denied). Two women described, under oath, how the Dean indirectly propositioned them for sex during meetings. A third, also under oath, testified that the Dean groped her at a public event and made sexual comments about her on several occasions.

The Dean stood trial from May 30 to June 11, 2019, in Ingham County Circuit Court, during which witnesses testified that the Dean sexually harassed and assaulted them, made inappropriate comments and abused his power as dean of the College. On June 12, 2019, a jury convicted the Dean of two counts of willful neglect of duty (both misdemeanors), including allowing Employee X to continue to see patients in 2014 while the University investigated a complaint against him and failing to follow the protocol resulting from the University's investigation of the 2014 complaint. The jury also convicted the Dean of the common law offense of misconduct of a public official. Misconduct in office is a felony punishable by up to five years in prison and a \$10,000 fine. The jury returned a not-guilty verdict on the criminal sexual conduct charge, alleging use of force or coercion to accomplish sexual contact. On August 7, 2019, the Dean was sentenced to one year for each of the misdemeanor convictions and eleven months for the felony conviction, to be served concurrently.

Evidence Obtained Regarding the University's Policies and Procedures

According to the University, it has had a policy against sexual harassment in place since the early 1980s. In September 1992, the University implemented a new sexual harassment policy that identified examples of behavior, including physical assaults, incorporated into the definition of sexual harassment. According to the University, supervisors and senior administrators were required to participate in training on the new policy, which included a component on reporting and conducting investigations on complaints of sexual harassment through campus grievance and adjudication procedures.

Until 2011, the University's policies required individuals to file a formal complaint before the University had an obligation to take any action to address a report of sexual harassment, including sexual violence. This approach was in violation of the requirements of Title IX, and in January 2011, in response to technical assistance the University received from OCR in another matter, the University revised its sexual harassment policies so that it no longer required a formal complaint to investigate a report of sexual harassment if the University had sufficient notice that sexual harassment occurred. Further, per the new policy, all complaints or reports, including those against employees, would be handled under the oversight of the Title IX office. Regarding employees, the policy stated that when such complaints were received by the Title IX coordinator, they would be referred to the "unit administrator" of the alleged harasser, who would process and investigate the complaints with the assistance of the Title IX office. Per the policy, human resources and the general counsel's office could also be consulted. The policy stated that "supervisors, managers, and other designated employees are expected to promptly report all allegations of sexual harassment to the Title IX Coordinator." Regarding complaints against employees, while the Title IX office assisted with the investigation of the complaints, any disciplinary decisions were to be issued by the employee's supervisor, in consultation with the

Title IX office, human resources, and the University's Office of the General Counsel. The University's current Policy on Relationship Violence & Sexual Misconduct (RVSM policy) still provides that if the Title IX office finds an employee has violated the policy, the employee's "unit administrator" is responsible for imposing discipline, in consultation with Academic Human Resources.

On April 6, 2012, the President issued a memorandum to all University employees reminding them of the University's reporting protocols for "suspected child abuse, child pornography, and allegations of sexual assault." The memo stated in part: "If in your position with MSU, you suspect that a child may be abused or neglected, you must contact the MSU police department immediately." The memo later stated: "If you receive an allegation of sexual assault related to a member of the University community (faculty, staff or student) you must report the alleged assault to the MSU Police Department and [the Title IX office]. This would include an allegation that an MSU community member has sexually assaulted a child." The memo stated: "The only employees who may honor a request for confidentiality from an adult victim of an alleged sexual assault are the University Ombudsman and those whose conversations are protected by a legally recognized privilege (i.e., doctor-patient, counselor-patient)."

On January 28, 2013, the President's office issued an official reporting protocol regarding incidents of child abuse, sexual assault, and child pornography. As part of this protocol, all University employees or volunteers, other than those with a legally recognized privilege, are required to report any allegation of sexual assault they receive that involves a member of the University community to the University police and the Title IX office. The protocol states: "Employees and volunteers who knowingly fail to report suspected child abuse, child neglect, sexual assault, or child pornography may be subject to disciplinary action, up to and including dismissal."

As part of the resolution agreement the University signed in 2015 regarding OCR Docket Nos. 15-11-2098 and 15-14-2113, the University agreed to revise its Title IX policies and grievance procedures and submit them to OCR for its review and approval. OCR approved the University's revised RVSM policy in a letter dated December 21, 2017.

Applicable Legal and Regulatory Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

The Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX, or alleging any actions which would be prohibited by Title IX. *See* 34 C.F.R. 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that

provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Hostile environment sexual harassment is unwelcome conduct of a sexual nature that is sufficiently serious (i.e., sufficiently severe, persistent, or pervasive) that it denies or limits a student's ability to participate in or receive the benefits, services, or opportunities of a school's program. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

In determining whether sexual harassment has created a hostile environment based on sex, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of sex-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

OCR enforces the requirements of Title IX consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination but are not intended to restrict the exercise of protected speech in violation of the First Amendment. Thus, for example, in addressing harassment allegations, OCR has recognized that the fact that a particular expression is offensive, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR.

Gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program. In cases of such harassment, a school has an obligation to respond promptly and equitably. In assessing all related circumstances to determine whether a hostile environment exists, incidents of gender-based harassment combined with incidents of sexual harassment could create a hostile environment, even if neither the gender-based harassment alone nor the sexual harassment alone would be sufficient to do so.

The type of sexual harassment traditionally referred to as "quid pro quo" harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently on the basis of sex, or the student's ability to participate in or benefit from the school's program has been denied or limited on the basis of sex, in violation of the Title IX implementing regulations.

Under Title IX, a school has a responsibility to respond promptly and effectively to sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes or in different housing arrangements on a campus, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate.

A school has a duty to respond to harassment about which it knows or reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a reasonably diligent inquiry. For example, in some situations if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to discovery of additional incidents. A school has notice of sexual harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.

A school can receive notice of sexual harassment in many different ways. A student's Title IX grievance is just one form of notice. A student or other individual may have contacted other appropriate personnel. An employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a staff member, a member of the local community, or the media. In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment – if the harassment is widespread, openly practiced, or well-known to students and staff.

In cases where an employee is engaged in sexual harassment of a student, a school may be held responsible under Title IX regardless of whether it knew or should have known about the harassment. Specifically, if an employee, in the context of carrying out his or her day-to-day job responsibilities for providing aid, benefits, or services to students, engages in harassment that denies or limits a student's ability to participate in or benefit from the school's program, the school is responsible for discrimination, whether or not it knew or should have known about it. The following factors are considered in determining whether an employee has engaged in harassment in the context of the employee's provision of aid, benefits or services to students: (1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct,

or to discipline students generally; (2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; (3) where and when the harassment occurred; (4) the age and educational level of the student involved; and (5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not. The school is therefore also responsible for remedying any effects of the harassment on the students, as well as for ending the harassment and preventing its recurrence. As noted above, this is true whether or not the recipient has "notice" of the harassment.

The Title IX regulation defines a student as a "person who has gained admission." 34 C.F.R. § 106.2(r). The regulation defines admission as "selection for part-time, full-time, special, associate, transfer, exchange or other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient." 34 C.F.R. § 106.2(q). What constitutes a recipient university's program or activity for purposes of Title IX broadly includes "all of the operations of . . . [a] college, university, or other postsecondary institution, or a public system of higher education." 34 C.F.R. § 106.2(h)(2)(i).

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

Once charged with notice of a sexually hostile environment, a school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

The Title IX regulation also prohibits discrimination based on sex in employment. See Subpart E, 34 C.F.R. §§ 106.51- 106.61. In the employment context, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment. When an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly. The employer should take immediate and appropriate corrective action by doing whatever is necessary to end the harassment, make the victim whole by restoring lost employment benefits or opportunities, and prevent the misconduct from recurring.

Analysis

- **Employee X’s Conduct and the University’s Response**

OCR finds that the University failed to provide an appropriate response to Reporter 11’s 2014 complaint to the University’s Title IX office, in which Reporter 11 alleged that Employee X sexually assaulted her during a medical appointment. OCR further finds that the University’s failure permitted an ongoing sexually hostile environment that denied Reporter 11 access to, and the ability to benefit from, the University’s programs and activities.

The University’s response to Reporter 11’s complaint was inappropriate because the University failed to provide an adequate, reliable, and impartial investigation of her complaint, including the opportunity to present witnesses. Reporter 11 was not provided the opportunity to present evidence to rebut the medical evidence that the University relied upon in reaching its determination.

As part of its investigation of Reporter 11’s complaint, the University interviewed four “[p]hysicians and treating professionals in the area” that it relied upon in the course of concluding that Employee X’s conduct was part of a legitimate medical procedure.³⁰ These four witnesses made statements to the Title IX investigator that addressed the complaint against Employee X. Trainer 5 told the investigator that “she believe[d] that [Employee X] had no inappropriate intent,” and that Employee X “is very professional, extremely smart and that she really respects him.” College Doctor 1 told the investigator that she was “completely convinced” that Employee X was not touching sexually due to her “many years of observing [him].” The College Chair told the investigator that “she would never say that [Employee X] would have any intent in [an] exam other than purely professional.” And, according to the investigator’s notes, College Doctor 2 appears to have told the investigator that her guess was that it was the side of breast—not full on front.

The University’s report treats all four of these “physicians and treating professionals” as expert witnesses, even though Employee X identified Trainer 5 and College Doctor 1 as witnesses in his interview with the investigator. For example, all four witnesses are separated from other witnesses under their own subheading: “Physicians and treating professionals in the area.” Lending further support that the University considered all four expert witnesses, the final report discusses the opinions of these four witnesses as though they are all part of a singular group: “All medical professionals were very credible, knowledgeable and thorough in their medical opinions and have a great deal of experience in the field—35 years total combined with regard to the physicians and 17 years with respect to [Trainer 5].”

³⁰ All four of the “physicians and treating professionals” were closely connected to Employee X. Trainer 5 worked regularly for Employee X, averaging four hours a week over 17 years. College Doctor 1 described herself as a “very good friend []” to Employee X and had worked with him regularly since she started medical school in 2002. The College Chair had known Employee X since 1988 and they taught a continuing education class together each year. College Doctor 2 had known Employee X since 1995, and Employee X was just ahead of her in residency; Employee X was also College Doctor 2’s attending physician when she was a fellow at the Sports Medicine Clinic and her daughter was an Employee X patient.

The University, relying on the statements of Employee X's friends and colleagues, concluded that Employee X provided "medically appropriate" treatment at this particular appointment. However, prior to reaching its conclusion, the University failed to inform Reporter 11 that it had obtained evidence from these witnesses and did not provide Reporter 11 with the opportunity to present evidence in rebuttal.

OCR notes that on July 28, 2014, the University sent a copy of the final draft report of its investigation to Reporter 11 and informed her that she had until August 4 to suggest modifications to the report. Giving Reporter 11 five business days to offer evidence in rebuttal was unreasonable and insufficient to cure the violation.

Based on the foregoing, OCR finds that the University failed to provide an equitable response to Reporter 11's 2014 sexual assault complaint, in violation of 34 C.F.R. § 106.8(b).³¹

OCR also finds that Employee X's conduct was sufficiently serious that it created a sexually hostile environment that denied or limited Reporter 11's ability to participate in or benefit from the University's programs and activities, in violation of 34 C.F.R. § 106.31. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. Here, Reporter 11 alleged that Employee X, a doctor, sexually assaulted her by massaging her breast and vaginal area. That alone is sufficiently serious, from an objective perspective, to create a hostile environment. OCR also considers the conduct from a subjective perspective—in other words, whether the conduct denied or limited the student's participation in or ability to benefit from a University program. In an interview, OCR asked Reporter 11 how the assault and the University's response affected her. Reporter 11 stated that being told she did not know the difference between sexual assault and medical treatment made her feel "dumb," and she was no longer interested in becoming a doctor, or taking prerequisite courses in pursuit of that goal, as a result of the assault and the University's response to it. She also stated it affected her performance on the MCAT.

In addition to the failure to respond equitably to Reporter 11's 2014 complaint and the resulting hostile environment, OCR finds that the University failed to take appropriate interim measures to protect its students commensurate with the gravity of Reporter 11's allegations. The only documentation OCR reviewed showing that Employee X stopped seeing patients during the investigation was a list of his clinical appointments. That list showed that Employee X did not see patients from May 23, 2014, through June 30, 2014—a little more than a month in an investigation that lasted more than three months. By the end of the investigation, Employee X had been visited by patients 249 times with sexual assault allegations pending against him.

When OCR asked Attorney 1, the investigator, about interim measures, she stated that Reporter 11 did not request any interim measures. While this may be true, Title IX requires recipients to take reasonable steps to protect students and program participants from sexual harassment. Given the ramifications of Reporter 11's allegations if they proved true, the University failed to take steps to protect its community from sex discrimination while its investigation was ongoing.

³¹ This finding concerns the University's handling of this individual case and not the 2014 grievance procedures as written. In this case, the University's gross misapplication of its grievance procedures rendered them ineffective.

- **The Dean's Conduct and the University's Response**

The preponderance of the evidence indicates that for nearly 15 years, the University obtained sufficient information and notice that the Dean's behavior was potentially creating a sexually hostile environment for students and staff. Despite this, the University repeatedly failed to respond to the information and notices, investigate, and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one had been created, and prevent the harassment from recurring.

The evidence shows that beginning in 2004 and thereafter, throughout the Dean's tenure, faculty, staff, students, and members of the public repeatedly commented, and at times complained, about the Dean's sexual and derogatory gender-based comments and behavior in the Dean's one-on-one encounters with students and faculty; in his actions as a course instructor; in his speeches; while he represented the College at public events, such as alumni dinners and fund raisers; at student-sponsored events and events for students, such as the orientation programs for new students to the College; and in his day-to-day governance of the College. As noted above, OCR interprets its regulations consistent with the requirements of the First Amendment. Some speech may be used to communicate ideas or emotions that nevertheless implicate First Amendment protections. However, this case presents extraordinary factual circumstances: The Dean's reported years of sexual comments were just a portion of the ongoing alleged sexually harassing conduct the Dean was reported to have engaged in during his long tenure at the College, including asking for sexual favors from a student in exchange for assistance with a certification examination. The University therefore had an obligation under Title IX to investigate and, if warranted, take steps necessary to determine whether a hostile environment based on sex had been created. In addition, the evidence shows that the complaints reached the highest levels of the University's administration, including the President, three additional persons who held the position of provost, including the Provost, advisors to the provost, several assistant/associate provosts, the Vice President for Human Resources, Attorney 4, and other administrators within the College.

The evidence also shows that time and again the University failed to adequately respond to the concerns that were raised, and even ignored student requests for responsive action to protect them from the Dean's conduct. Significantly, many of the notices the University received about the Dean's conduct were reported pursuant to his performance evaluations. In every instance, at the conclusion of the evaluation period, the Dean was reappointed.

In 2004, after more than 20 students complained to their supervisors about the Dean's remarks at a student-run public event, and those complaints reached the highest levels of leadership at the University, including the offices of the president, the provost, the general counsel, and University development, there was no evidence that the University took any action to address the complaints until more than six months later, when it responded to issues related to the Dean's behavior that arose in the 2005 five-year review of his performance as dean.

By the completion of the Dean's 2005 five-year review, the Office of the Provost and the Office of the General Counsel were on notice that administrators, faculty, staff, and students raised concerns about comments and behavior that the assistant provosts described as "persistent,"

“serious,” and “bordered on obscene,” including a report that the Dean physically pushed against a student while making off-color, sexist remarks, a report that the Dean made sexual comments and jokes that the reporter considered inappropriate, especially in the workplace, behavior described as “bridging on sexual harassment,” and a report that the Dean frequently made crude jokes about sex in public settings. At least some of these individuals were also on notice that there was a reluctance to report the Dean’s behavior and that at least some people felt that this was something they had to accept.

The University appeared to recognize that if these reports were true, the Dean’s conduct could constitute sexual harassment, as suggested by the notes of the June 7, 2005, meeting and mostly redacted memorandum in the Office of the General Counsel. These documents indicate that Attorney 4, Provost 1, and Assistant Provost 1 met with the Dean and outlined the elements necessary to constitute a violation of the University policy on sexual harassment. At the meeting Provost 1 said he told the Dean that the University would not tolerate recurring comments of the same nature as those the Dean made at the 2004 event. The notes support that, given the Dean’s history, they believed that if he made even one more comment, it could be persistent and pervasive enough to constitute harassment (even though Assistant Provost 1 had already characterized the Dean’s commentary at that point as “persistent” and “serious”). The notes also show that although they discussed contacting the Title IX office, it was solely to find out if anyone had filed a formal complaint against the Dean, not to request a proper Title IX inquiry of the reports they had received. Moreover, although they clearly discussed contacting the Title IX coordinator, there is no evidence that they actually did that.

Again, however, the University did not attempt to speak with any of the reporters, including the students who indicated a willingness to discuss an incident involving the dean pushing against a student, and did not appear to investigate any of the reports in a manner that would give voice to the reporters or those who experienced the Dean’s conduct. The University also apparently did not document the conversation between Attorney 4 and Provost 1 in a manner that would ensure that if the Dean engaged in similar conduct, he would be held accountable or to ensure that those in a position to act on future reports would know about the previous reports and the University’s concerns about the Dean’s conduct.

In 2010, the University received notice of more “troubling comments regarding sexism.” Given the conclusion that the administrators and Attorney 4 reached in June 2005 that even one more comment from the Dean could constitute persistent and pervasive conduct, reports of more troubling comments certainly triggered the University’s Title IX duty to respond to the information and notices, investigate, and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one had been created, and prevent the harassment from recurring.

Provost 2 and the Vice President for Human Resources considered the Dean’s conduct serious enough that he needed more than just sensitivity training; they discussed putting him on a plan to monitor his conduct. It was serious enough that the President received a copy of the memorandum describing the actions the University was taking. Again, as in 2005, they suggested that there would be severe consequences “if the behavior continues.” The Vice President for Human Resources indicated the need for a “clear statement” from Provost 2 to that

effect, and that if the Dean did not change, he would “be out.” Incredibly, however, no one OCR interviewed, including the Provost, who oversaw the 2015 review, and at least one person identified as being responsible for implementing the plan, was even aware of it. OCR saw no evidence that any plan was actually implemented.

The Dean’s 2015 five-year review includes the most extensive reports of sexually and sex-based harassing conduct. Despite the continuing (and growing) reports of the Dean’s conduct, the Provost did not forward the reports to the Title IX office or take any disciplinary action against the Dean.

The Provost’s only response to the 2015 reports was to hold two undocumented meetings. The Provost purportedly met with a group of women, all of whom worked under the Dean and reported to him, to discuss the Dean’s behavior at the College. She took care to not document the substance of the meeting or to identify the participants, so as not to put them at risk. The Provost also told OCR that she met with the Dean about his behavior. The only record of the Provost’s meeting with the Dean, however, is her one-sentence email summary to the Vice President for Human Resources, punctuated with a smiley-face emoji, a response which betrays her failure to appreciate the seriousness of the matter.

The University’s inaction in response to so many complaints about the Dean over so many years very likely perpetuated the belief expressed by many that they had no choice but to tolerate the Dean’s behavior because the University would not take any effective measures reasonably calculated to end it. One of the reporters in the Dean’s 2015 review stated that the Dean’s sexist remarks and inability to talk to women while looking at their eyes instead of their breasts was well known. The reporter said that they did not think it was a new issue, but instead, it was an issue the College had chosen to ignore. When asked if the Dean’s behavior changed after either of the reviews, a former administrator said, “definitely not.” When asked if he thought that the University’s response was reasonably calculated to end the Dean’s comments and behavior, the former administrator responded, “obviously not— [the Dean] was totally undeterred.” The evidence confirms this to be the case.

Although various University administrators may have informally discussed the Dean’s conduct with him, the evidence shows that he never tempered his behavior. Even when he was presented with the negative comments on his orientation speech, although he modified it somewhat, he continued to say things to new students that they described as unprofessional, belittling, and offensive.

Even after the University’s Title IX office began receiving complaints about the Dean and the Dean was criminally convicted of misconduct, the University failed to timely complete any full complaint investigations and determine whether the Dean engaged in sexually harassing behavior that created a hostile environment, and in response, take remedial action to stop the harassment, prevent its recurrence, and remedy its impact.

Finally, even when University administrators recommended taking disciplinary action against the Dean, it focused not on his years of misconduct and sexual harassment, but rather, on his failure to implement the guidelines against Employee X. Moreover, the University ultimately did not move forward with the disciplinary process and instead allowed the Dean to retire.

Notably, administrators at the highest levels of the University's governance were aware of the ongoing reports of the Dean's behavior, believed as early as 2005 that zero tolerance was necessary to avoid persistent and pervasive conduct, and then repeatedly failed to take appropriate action to address the conduct when it continued, although they had a duty to do so. The President was notified in 2004, when she was provost, of the student complaints and took no action. As early as 2005 the Provost was privy to a memorandum describing reports alleging serious and persistent behavior of a sexual nature by the Dean and neither she nor others on the committee took action to address the concerns. In 2010, the Vice President for Human Resources stated in writing that mere training was not sufficient to address the Dean's behavior, and then did nothing. The President was copied on the 2010 plan devised to address the Dean's behavior. The Provost received and reviewed the numerous reports of the Dean's possible harassment in the 2015 review and again, after likely conferring with the President, took little to no action to address it. The purpose for the University's soliciting this information was to determine whether to reappoint the Dean. In other words, the President, the Provost, and the Vice President for Human Resources were in a position to act upon the reports, which were gathered for that specific purpose, and failed to do so.

Thus, based on the above, OCR finds that, to date, in response to numerous reports of the Dean's behavior, the University failed to effectively investigate and, if warranted, take steps necessary to determine whether a hostile environment based on sex had been created and, if so, take steps to prevent the harassment from recurring and remedy its discriminatory effects.

OCR also finds that a preponderance of the evidence supports that the University violated the Title IX regulation at 34 C.F.R. § 106.8(b) by failing to provide a prompt and equitable response to a student complaint made to the University's Title IX office regarding the Dean's conduct, which she alleged to be sexually harassing.

Once a school has notice of possible sexual harassment of students – whether carried out by employees, other students, or third parties – it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from recurring again.

In this instance, according to the University, to date, the University has received numerous complaints regarding the Dean, most of which involve student claimants. With few exceptions, all of the investigations were still pending prior to the University's entering the agreement, including a complaint involving a student claimant that the Title IX office opened more than a year ago, on December 14, 2017. With respect to the complaints raised in the undated memorandum from "[c]oncerned medical students," of which the University has been on notice since before 2008 and again as of at least February 8, 2018, the University appears to have taken little or no action at all.

In the December 14, 2017, complaint, the student alleged that in a meeting she had alone with the Dean in [redacted content], the Dean implied that if she provided him with sexual favors he would consider the student's request to [redacted content]. The student also alleged that the Dean made other sexually explicit comments during the meeting, including, for example, comments about pole dancing and the difficulties of sending naked pictures to another person. According to the student, after her meeting with the Dean, she became completely withdrawn, had trouble sleeping, and experienced [redacted content], because she feared having to meet with the Dean again if she did not [redacted content]. The student [redacted content]. Thus, the school was on notice of possible sexual harassment and, under Title IX, was required to respond promptly and effectively.

In response to these allegations, the University initiated an investigation and by February 2018, spoke with witnesses and gathered evidence. However, the investigation came to an apparent halt after the Title IX investigator notified the Dean of the complaint. The Dean, in his brief email response to the allegations on January 29, 2018, did not explicitly deny making the comments alleged. Instead, he acknowledged that he told the student about [redacted content] modeling for the clinical skills course and said that he did not know where the other comments came from. The Dean said that he could not meet with the investigator in person until after June 29, 2018, when his medical leave ended and he could engage in campus business again. The investigator accepted this delay, relayed the information to the student, and, in recognition that such a delay could cause the student stress, apologized.

Although there is no fixed timeframe under which a school must complete an investigation, waiting months to complete the investigation to accommodate the Dean was not prompt, particularly given the seriousness of the allegations in the complaint and the reports the University had received repeatedly concerning both the Dean's behavior towards women and his intimidating manner.

Moreover, the delay in completing the investigation was not effective or reasonably calculated to end the alleged harassment. To the contrary, and as recognized in the investigator's email to the student, the delay was likely to cause the student stress, perpetuating the ongoing harm the student had already identified as resulting from the Dean's conduct toward her, all manifestations of heightened stress—anxiety, sleeplessness, and withdrawal, due in part to the concern she had of having to meet again with the Dean. In addition, the investigator suggested in her email that the Dean would return to the University after June 29, 2018, which very reasonably could have heightened the impact of whatever stress the student had been experiencing as a result of the Dean.

Finally, according to documentation submitted by the University through October 1, 2018, the University had left the complaint allegation unresolved, had not taken adequate steps to determine if a hostile environment existed, and if so, to address the effects of the Dean's alleged actions on the student, which again, could be ongoing, particularly given the nature of the harm he may have caused by his actions and the harm caused by the potential fear of his return. Throughout OCR's investigation, the University had not taken corrective action to address the environment that the Dean may have created, nor had it provided services to the student to remedy the alleged harassment (at least as reflected in the University records).

Based on the above, OCR finds that the University failed to provide a prompt and equitable response to the student’s complaint of sexual harassment against the Dean, in violation of 34 C.F.R. § 106.8(b).

Moreover, throughout OCR’s investigation, the University did not promptly and equitably respond to and complete its investigation into several other complaints about the Dean’s sexually harassing conduct³².

Although the Provost indicated to OCR that the University initiated the tenure revocation process against the Dean in part because of his inappropriate interactions with students and complaints about remarks that the Dean made at orientation, the written record belies this. On February 9, 2018, (after the University opened complaints regarding the Dean’s inappropriate interactions with students and remarks the Dean made at orientation), University administrators recommended initiating dismissal for cause proceedings against the Dean based on his failure to “monitor and enforce clinical practice guidelines put in place for former doctor [Employee X] following the conclusion of the 2014 sexual harassment investigation.” It is also inconsistent with the Title IX investigation records and the University’s own assertion as of October 1, 2018, indicating that most of its complaint investigations against the Dean were ongoing.

- **The President’s and the Provost’s Failure to Take Effective Actions**

Administrators at the highest level of the University—the President and the Provost—had a long and disturbing history of failing to take any effective actions to address what was to become, over the course over 14 years, a torrent of reports and complaints about the Dean’s sexually harassing conduct.

- **The President**

The President, as then-provost, failed to take any effective actions in December 2004 when she first became aware that 20 students had complained in October 2004 that the Dean made comments that were potentially sexually harassing. There was no response to what obviously was a major concern for many students.

The President failed to take any effective actions in April 2005—by which time she was President of the University—when the Dean’s first five-year review included a memorandum entitled “[The Dean], Spring 2005 Review, Comments Regarding Inappropriate Remarks,” which laid out a series of concerns from students, faculty, and clinical chairs regarding persistent and serious comments of a sexual nature in public and quasi-public settings, involving faculty, staff, students, and alumni. One summary included in the review noted that “[O]thers expressed serious concern regarding this dimension, particularly regarding his role as Chief Academic Office [*sic*] of the College.” The Dean was instead reappointed in June 2005.

³² As noted above, after signing the enclosed agreement, the University submitted a monitoring report on September 3, 2019, including information about its response to the complaints about the Dean. OCR will review this information and respond under separate cover.

The President failed to take any effective actions in April 2010 at the conclusion of the Dean's second five-year review, which included the following observations regarding his behavior: "Troubling comments re sexism—reluctance to discuss by students . . . chauvinistic and sexist . . . widespread perception of sexism/chauvinism." Although there was some discussion among administrators about a plan to require the Dean to have "advisors" provide him feedback on his use of inappropriate comments, the plan was never implemented. The Dean was reappointed in April 2010, with the then-provost noting the Dean's commitment "to advancing the goals of the College within the broad mission of [the University]."

The President failed to take any effective actions in June 2015 at the conclusion of the Dean's third five-year review, which, according to the [redacted content] who helped to conduct a survey, included 30 to 40 comments about the Dean's sexually harassing conduct. Significantly, one section of the review, entitled "Communication and Human Relations" stated the following:

The Committee acknowledges and has discussed multiple allegations made by respondents—appearing to come from students, faculty and staff—relevant to the Dean's interpersonal behavior and communications, particularly with members of the opposite sex. Since these are allegations from anonymous individuals, which the committee cannot verify, nor has the power to investigate if there is any substance, we bring it to the attention of the University Administration.

Although the Provost stated that she talked with the Dean about his role as a representative of the University and told him that she had a concern about his language, no action beyond this strikingly tepid response was taken. At the conclusion of the review, the Provost met with the President to discuss the Dean's reappointment. The Dean was reappointed in June 2015, the Provost's memorandum to faculty, staff, and students noting that she "was pleased that [the Dean] has agreed to continue to serve as Dean."

○ **The Provost**

The Provost, as then-associate provost, was a member of the group of administrators who conducted the first five-year review of the Dean in April 2005. In her role the Provost interviewed four chairpersons of the College and the chair of the CAC. In her memorandum summarizing these interviews, the Provost noted that she received a "variety of comments on his communication skills, including some referring to gender specific comments." As a member of the group assessing the Dean, the Provost was aware of the concerns about the Dean's behavior that other members of the group received.

The Provost, who had been named to that position in April 2014, presided over the Dean's third five-year review in June 2015. As noted above, she failed to take effective action to address the increasing number of comments from faculty and staff issues concerning the Dean's sexually inappropriate behavior. Her only response was to talk to the Dean about his role as a representative of the University and express concern about his language. The Provost also met with women in leadership positions at the College, but there is no documentation concerning what was shared at the meeting and no indication that any actions were taken as a result of that meeting.

On December 14, 2017, the same day that the University opened for investigation two complaints alleging sexual misconduct by him, the Dean took a medical leave of absence and stepped down as Dean of the College. On March 27, 2018, the State Attorney General charged the Dean with two counts of willful neglect of duty as a public officer, one count of criminal sexual conduct, and one count of a common law offense in Ingham County District Court. The felony misconduct in office charge, of which the Dean was convicted, concerns the Dean's actions regarding four individuals, one of whom, a female student, alleged that the Dean suggested that he would offer her leniency on a test benchmark requirement in exchange for sexual favors.

In May 2018, slightly over a month after the Dean was indicted, the Provost offered the following defense of her response to the reports of the Dean's inappropriate behavior:

We had just completed his five-year review . . . The results included several accounts of inappropriate remarks and a number of concerns about uncouth and sometimes offensive language during the review period . . . I specifically addressed these in the required post-review conversation.

The numerous Title IX complaints filed against the Dean after his resignation from the College and his indictment on charges of sexual misconduct show just how ineffective the Provost's actions were in addressing what was a long history of the Dean's sexually harassing behavior at the College. Reports of potentially sexually harassing behavior by any employee should be of great concern to the highest level administrators of an institution; however, it is inexcusable that the President and Provost of the University failed to take *any* effective steps to address the numerous, very serious concerns that were regularly raised about the behavior of the head of one of the major components of the University.

Conclusion

OCR has determined that the evidence supports a conclusion that the University violated the Title IX implementing regulations at 34 C.F.R. §§ 106.8(b) and 106.31 as follows:

- The University failed to respond appropriately to Reporter 11's complaint of sexual assault by Employee X, and its failure caused Reporter 11 to be subjected to a sexually hostile environment. In light of the danger posed by Employee X, the University also failed to take actions to eliminate any sexually hostile environment created by Employee X for other students in the University community.
- The University failed to take appropriate actions to address reports concerning the Dean's potentially sexually harassing conduct. For nearly 14 years the Dean's conduct continued unchecked—if not enabled—by the failure of administrators at the highest levels of the University to take appropriate actions to address it.

The University signed a resolution agreement (the Agreement) to resolve the violation findings described above. The Agreement requires the University to:

- make substantial changes to the University’s Title IX procedures and ensure that certain officials recuse themselves from Title IX matters;
- take remedial actions to address the impact of the sexual misconduct of Employee X and the Dean on students, faculty, and other staff within the College, the Sports Medicine Clinic, and related facilities, programs, and services;
- provide a process for those victims of Employee X who have not otherwise had an opportunity to seek remedy to come forward and seek remedies to which they might be entitled;
- review the actions of current and former employees of the University who had notice but who failed to take appropriate action in response to reports of sexual misconduct by Employee X or the Dean, and consider appropriate sanctions against those employees;
- address the campus climate around issues of sexual harassment and sexual violence; strengthen staff training; and assess the need for additional student services; and
- exercise adequate Title IX oversight of the University’s youth programs by notifying Youth Program participants of its Title IX grievance procedures and that the procedures apply to Youth Programs.

This concludes OCR’s directed investigation. This letter of findings should not be interpreted to address the University’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter, including the remaining portions of the monitoring reports submitted to OCR by the University under the 2015 Agreement, which OCR is still reviewing and will address under separate cover.

This letter sets forth OCR’s determination in this directed investigation; it is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated in the complaint resolution process. If this occurs, the individual may file a complaint with OCR alleging such treatment.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure